

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

*Foreign Acquisitions and Takeovers Legislation Amendment Act 2015*

*Foreign Acquisitions and Takeovers Legislation (Transitional) Rule 2015*

Item 13 of Schedule 3 to the *Foreign Acquisitions and Takeovers Legislation Amendment Act 2015* (Amending Act) provides that the Treasurer may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Amending Act.

The primary purpose of the *Foreign Acquisitions and Takeovers Legislation (Transitional) Rule 2015* (Rule) is to ensure that the following time limits will apply:

- where an application was made under Australia's Foreign Investment Policy before the commencement of the Amending Act, the Treasurer must make an order or a decision in relation that application within 30 days of the commencement of the Amending Act (or such further period as requested by the person in writing – the period so extended); and
- where a person applied for a certificate under paragraph 3(e), (h) or (r) of the *Foreign Acquisitions and Takeovers Regulations 1989* before the commencement of the Amending Act and a decision on that application was not made by commencement, the Treasurer must make a decision on the application within 30 days of the commencement of the Amending Act (or such further period as requested by the person in writing – the period so extended).

Details of the Rule are set out in Attachment A.

The Statement of Compatibility is set out in Attachment B.

The Rule is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

While the Department of the Treasury (Treasury) did not release an exposure draft of the Rule for public comment, Treasury undertook significant consultation more generally on the foreign investment reforms package, which this Rule supports. Treasury did release exposure drafts of the Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015 (the Act that prescribes the rule making power for this Rule) and the associated regulation (Foreign Acquisitions and Takeovers Regulation 2015). The Rule is minor in nature as it only prescribes machinery related transitional provisions for the Act under which the Rule is made.

The Rule commences the later of the day after the Rule is registered and immediately after the commencement of Schedule 3 to the Amending Act.

**Section 1 — Name**

The title of the instrument is the *Foreign Acquisitions and Takeovers Legislation (Transitional) Rule 2015*.

**Section 2 — Commencement**

The whole of the instrument commences the later of the day after the instrument is registered and immediately after the commencement of Schedule 3 to the Amending Act.

**Section 3 — Authority**

The instrument is made under the Amending Act.

**Section 4 — Definitions**

This section defines the meaning of terms used in the instrument.

**Section 5 — Notices given under the Policy before commencement**

Notices given under Australia's Foreign Investment Policy (Policy) are not subject to statutory time limits. Typically an administrative deadline has been applied. Where a person has given a notice under the Policy before the commencement of Schedule 1 to the Amending Act, the notice will, after the commencement, be taken to be a notice that a significant action (that is not a notifiable action) is proposed to be taken. The effect of section 5 of the Rule is to ensure that the time limit for making orders and decisions applies to these applications. The Treasurer will have 30 days after the commencement of Schedule 1 to the Amending Act to make a decision about that significant action (or the decision period as so extended at the request in writing of the foreign person who gave the notice).

There is no fee involved.

**Section 6 — Applications made before commencement**

Applications under paragraphs 3(e), (h) and (r) of the *Foreign Acquisitions and Takeovers Regulations 1989* (old regulations) before the commencement of Schedule 1 to the Amending Act were not subject to statutory time limits. For applications for Advanced Off-The-Plan (AOTP) certificates, annual program certificates, and Integrated Tourism Resort (ITR) certificates typically an administrative deadline has been applied. Where a person has submitted an application for an exemption certificate under paragraphs 3(e), (h) or (r) of the old regulations and a decision on the application was not made before the commencement of Schedule 1 to the Amending Act, the Treasurer may give an exemption certificate under sections 57 or 58 of the Amending Act. The effect of subsection 6(2) of the Rule is to ensure that the time limit for making a decision about an exemption certificate will apply to these applications. The Treasurer will have 30 days after the commencement of Schedule 1 to the Amending Act to decide whether to give an exemption certificate in these circumstances (or a further period as extended if the foreign person who made an application requesting in writing an extension).

There is no fee involved.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Foreign Acquisitions and Takeovers Legislation (Transitional) Rule 2015***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The primary purposes of the *Foreign Acquisitions and Takeovers Legislation (Transitional) Rule 2015* (Rule) is to ensure that the following time limits will apply:

- where an application was made under Australia's Foreign Investment Policy before the commencement of the Amending Act, the Treasurer must make an order or a decision in relation that application within 30 days of the commencement of the Amending Act (or such further period as requested by the person in writing); and
- where a person applied for a certificate under paragraph 3(e), (h) or (r) of the *Foreign Acquisitions and Takeovers Regulations 1989* before the commencement of the Amending Act and a decision on that application was not made by commencement, the Treasurer must make a decision on the application within 30 days of the commencement of the Amending Act (or such further period as requested by the person in writing).

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.