DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS  
COMMITTEE ON CAPITAL MOVEMENTS AND INVISIBLE TRANSACTIONS  

AUSTRALIA: MODIFICATION OF POSITION UNDER THE OECD CODE OF LIBERALISATION OF CAPITAL MOVEMENTS  

(Draft Report by the Committee on Capital Movements and Invisible Transactions)  

This draft report to Council is submitted to the Committee on Capital Movements and Invisible Transactions under written procedure. If no objections are received by the Secretariat by c.o.b. on Friday, 18 August 2000, this report will be considered approved and forwarded to Council.  

Contact: Mr. Joachim Karl, tel. 33-1 45 24 15 22; fax. 33-1 44 30 61 35; e-mail: joachim.karl@oecd.org.

94104  

Document complet disponible sur OLIS dans son format d’origine  
Complete document available on OLIS in its original format
AUSTRALIA: MODIFICATION OF POSITION UNDER THE CODE OF LIBERALISATION OF CAPITAL MOVEMENTS

(Draft Report by the Committee on Capital Movements and Invisible Transaction)

I. Introduction, Summary and Proposed Action

1. The purpose of this report and the proposed Council action is to modify Australia’s position under the Code of Liberalisation of Capital Movements (the “Code”) to reflect liberalisation measures relating to direct investment and real estate.

2. Australia currently maintains, inter alia, a reservation under List A, item I/A (direct investment) concerning “proposals falling within the scope of Australia’s Foreign Acquisitions and Take-overs Act 1975. It broadly covers acquisitions of urban land, acquisitions of partial or controlling interests in Australian companies or businesses with total assets valued over stipulated thresholds and other arrangements relating to foreign control of companies and businesses”. Australia also has a limited reservation under List B, item III/A1, concerning acquisitions of real estate.

3. The Australian authorities have recently informed the Committee that on 4 August 1999 and 3 September 1999, the Government announced a number of changes to foreign investment policy. These changes have been directed at:

   − removing restrictions and reducing notification obligations on business;

   − lowering compliance costs for all foreign investors, by increasing notification and examination thresholds;

   − removing certain requirements for individuals holding, or entitled to hold, a special category visa, investing through Australian registered companies and trusts; and

   − reducing costs by streamlining administration of foreign investment policy, while ensuring foreign investment is consistent with the interests of the Australian public.

4. In light of these developments, the Australian authorities propose to amend the above mentioned reservations accordingly. The Committee welcomed these proposals.

5. Accordingly, the Council is invited to adopt the following draft conclusions:

   “THE COUNCIL

   a) noted document C(2000) …;

II. Foreign Direct Investment

6. Australia has amended its policy as follows:
   − the prior notification threshold for foreign investment in existing businesses has been increased from $5 million ($3 million for rural businesses) to $50 million. This increase also applies to rural business.
   − foreign investment approval requirements have been removed for individuals, who hold or are entitled to hold a special category visa and invest in Australian residential real estate through Australian companies and trusts; and
   − simplified processing arrangements for proposals to invest in businesses valued at less than $100 million have been introduced.

7. The Government also increased the voluntary notification threshold to $50 million (from $20 million) for the acquisition of Australian assets of an offshore company by another offshore company. It made exempt acquisitions of residential real estate by Australian permanent resident visa holders, not ordinarily resident in Australia, purchasing through Australian companies or trusts.

8. From these liberalisation measures, only the increase of the prior notification threshold for foreign investment from $5 million ($3 million for rural businesses) to $50 million affects Australia’s position under List A, item I/A, of the Code. As a result, the Australian authorities proposed to amend their reservation accordingly (by replacing the words “stipulated thresholds” by the words “$50 million”).

III. Real Estate

9. The following modifications to policy were introduced:

I. Modifications allowing Amendments of Australian Reservations

a. Treatment of developed non-residential commercial properties

10. Where properties are not subject to heritage listing, the notification threshold to acquire developed non-residential (i.e. it is not an accommodation facility) commercial properties has been raised from $5 million to $50 million. This allows a modification of Australia’s limiting remark (i) concerning its reservation under List B, item III/A1, of the Code. As a result, the scope of the reservation will be narrowed.

11. In addition, acquisitions of developed non-residential commercial properties, valued between $50 million and $100 million, are no longer subject to detailed examination, unless the facts of the proposal raise issues pertaining to the national interest. These operations remain covered by the reservation.

---

1. Heritage lists are created by different levels of government and by community organisations to provide information on the heritage value of places. This information can then be taken into account by decision-makers to help ensure that heritage values are preserved. In the case of developed commercial real estate, a property with historic heritage significance may be included on one or more of the heritage lists. These lists are readily available to the public through the respective organisations.
b. **Strata titled hotel accommodation**

12. Sales are permitted to foreign interests of strata-titled hotel rooms in designated hotels where each room is subject to a long-term (10 years or more) hotel management agreement. The hotel management agreement must limit the owners’ rights to an income stream, not occupancy. The management must retain ownership of the common property. In addition, owners do not have the right to opt out of the management agreement. The hotel must provide a full range of facilities consistent with industry accepted hotel features.

13. Accordingly, the Australian authorities propose to exclude “acquisition of strata-titled hotel rooms in designated hotels where each room is subject to a long-term hotel agreement” from the scope of the reservation under item III/A1 of the Code.

c. **Australian citizens and foreign spouses**

14. Australian citizens and their foreign spouses purchasing as joint tenants are no longer required to seek approval for purchases of residential property in Australia.

15. Consequently, the Australian authorities propose to exclude the “acquisition of residential real estate by Australian citizens and their foreign spouses where they purchase as joint tenants” from the scope of application of the reservation under item III/A1 of the Code.

d. **Foreign trustees’ acquisition of interests in urban land**

16. Exemption is given for the acquisition of interests in Australian urban land by foreign-owned responsible entities acting on behalf of managed unit trusts and other managed public investment schemes registered under Chapter 5C of the *Corporations Law*, where they are investing for the benefit of fund investors or unit holders ordinarily resident in Australia.

17. Accordingly, the Australian authorities propose to exclude the “acquisition of Australian urban land by foreign owned responsible entities acting on behalf of managed unit trusts and other public investment schemes registered under Chapter 5C of the Corporations Law, where they are investing for the benefit of fund investors or unit holders ordinarily resident in Australia” from the scope of application of the reservation under item III/A1 of the Code.

2. **Other Modifications**

a. **Treatment of vacant land and house packages**

18. The acquisition of house and land packages, “off-the-plan” i.e. where construction has not commenced, are no longer limited to 50 per cent of the project’s sales. Consistent with the policy applied to purchases of vacant land for development, approval is conditional on continuous construction of the relevant dwelling commencing within 12 months.

b. **Integrated Tourism Resorts**

19. The policy of designating Integrated Tourism Resorts (ITRs), within which foreign persons are permitted to acquire residential property without restriction, only applies to developed residential property
which is leased back to the resort operator to be available for tourist accommodation when not occupied by
the owner. Owners of residential property in existing ITRs will retain their current entitlements.
ANNEX

DRAFT DECISION OF THE COUNCIL AMENDING ANNEX B TO THE CODE OF LIBERALISATION OF CAPITAL MOVEMENTS

THE COUNCIL,

Having regard to Article 5a) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to the Code of Liberalisation of Capital Movements;

Having regard to the Report by the Committee on Capital Movements and Invisible Transactions on the modification of the position of Australia under the Code of Liberalisation of Capital Movements [C(2000)...];

DECIDES:

1. The list of reservations by Australia concerning List A, item I/A (direct investment) in Annex B to the Code of Liberalisation of Capital Movements is amended to read as follows:

“List A, I/A Direct investment

– In the country concerned by non residents

Remark: The reservation applies only to:

i) Investments in banking, real estate, mass circulation and ethnic newspapers, broadcasting (including television), civil aviation and uranium;

ii) Proposals falling within the scope of Australia’s Foreign Acquisitions and Takeovers Act 1975, which broadly covers acquisitions of urban land, acquisitions of partial or controlling interests in Australian companies or businesses with total assets valued over $50 million and other arrangements relating to foreign control of companies and businesses;

iii) Proposals to establish new businesses or projects where the total investment is A$ 10 million or more;

iv) Investments by foreign governments or their agencies;

v) Investments to the extent that constituent States or Territories of Australia exercise legislative and administrative control over such investment;

vi) Ownership of Australian flag vessels, except through an enterprise incorporated in Australia.
2. The list of reservations by Australia concerning List B, III/A1 (operations in real estate) in Annex B to the Code of Liberalisation of Capital Movements is amended to read as follows:

List B, III/A1 Operations in Real Estate

− In the country concerned by non-residents.

Remark: The reservation does not apply to:

i) Acquisitions of direct interests in non-residential commercial real estate valued under $5 million or $50 million where such real estate is not heritage listed;

ii) Acquisitions of interests in time-share schemes where the entitlement of the foreign interest and any associates is less than four weeks per year;

iii) Acquisitions of residential real estate by approved migrants, special category visa holders, and other foreign nationals entitled to permanent residence in Australia, including Australian permanent residents, not ordinarily resident in Australia and special category visa holders buying through Australian companies and trusts;

iv) Acquisitions by non-resident Australian citizens, either directly or indirectly through Australian companies and trusts;

v) Acquisitions of offices and residences by foreign government missions for use as official missions or residences for staff subject to sale to Australians or other eligible purchasers when no longer being used for those purposes;

vi) Acquisitions of minority interests in public companies and trusts whose principal assets are comprised of real estate, to the extent permitted by regulations under the Foreign Acquisitions and Take-overs Act;

vii) Acquisitions of real estate by general insurance companies operating in Australia where the acquisitions are made from the reserves of the companies and are within the prudential guidelines of the Insurance Commissioner;

viii) Acquisitions by life assurance companies, representing investment of their Australian statutory funds, by Australian pension funds of foreign employers and by foreign-controlled charities or charitable trusts operating in Australia for the primary benefit of Australians;

ix) Acquisitions of strata-titled hotel rooms in designated hotels where each room is subject to a long-term hotel agreement;

x) Acquisitions of residential real estate by Australian citizens and their foreign spouses where they purchase as joint tenants;

xi) Acquisitions of Australian urban land by foreign owned responsible entities acting on behalf of managed unit trusts and other public investment schemes registered under Chapter 5C of the Corporations Law, where they are investing for the benefit of fund investors or unit holders ordinarily resident in Australia.