16 September 2026

FINANCIAL SERVICES COUNCIL

Mr Lachlan Alvey
A/g Assistant Secretary
Tax and Transfer Branch
The Treasury
Langdon Crescent
Parkes ACT 2600

via online portal

Dear Mr Alvey

RE: Treasury consultation – Foreign investment framework reforms – Review of ineffective conditions

The Financial Services Council (**FSC**) welcomes the opportunity to provide a submission to Treasury's consultation on the review of ineffective conditions attached to existing foreign investment approvals.

The FSC supports the Government's objective of ensuring conditions remain necessary, effective and fit for purpose. In particular, we welcome the review's focus on identifying conditions that duplicate other Australian regulatory obligations or no longer materially contribute to managing an identified national interest or national security risk.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 130 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, and financial advice licensees. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing more than $4 trillion on behalf of over 16.9 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

The review is an important part of the Government's broader move towards a more risk-based foreign investment framework. The FSC considers that conditions should be targeted to risks that arise because of foreign ownership or control. The foreign investment framework should not be used to impose obligations that simply replicate Australian law, or requirements that would not otherwise apply to an equivalent Australian-owned business and are more appropriately addressed through another regulatory regime. This is consistent with the FSC's previous submissions on the framework.

Member feedback indicates that tax conditions are a particular area where substantial simplification is possible. Tax conditions can be lengthy and difficult to interpret, involve

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overlapping notification and annual reporting requirements, and duplicate information provided through other Treasury and ATO processes. Members have also identified uncertainty about applicable reporting channels and timeframes, and about what further ATO or FIRB engagement may follow a notification.

The FSC therefore supports a review that removes duplicative conditions, ensures remaining conditions have a clear nexus to foreign investment risk, and applies a coordinated 'tell-us-once' approach across Treasury and the ATO. This should be supported by clearer drafting, appropriate materiality thresholds and greater certainty around agency response timeframes. As an industry association, the FSC is not itself the holder of individual foreign investment approvals. Our submission therefore focuses on systemic issues identified by members rather than reproducing individual approval conditions or reference numbers.

In the meantime, if you have any questions relating to our submission, please do not hesitate to reach out to me on 0421 944 648 or by email (ajohnson@fsc.org.au).

Yours sincerely

Aidan Johnson
Policy Director
Investments and Funds Management

Conditions should be targeted to foreign investment risks

Conditions should provide an additional and proportionate safeguard against an identified risk associated with foreign ownership or control. They should not simply duplicate obligations that already apply under Australian law.

This is particularly relevant to tax conditions. Foreign investors operating in Australia are already required to comply with Australian tax law and are subject to the ATO's existing compliance and enforcement powers. Requiring a foreign investor to separately attest through a foreign investment approval that it is complying with Australian tax law can create an additional administrative requirement without materially strengthening the underlying obligation.

The same principle should apply more broadly. The foreign investment framework should not become a mechanism through which agencies impose requirements that would not apply to an equivalent Australian-owned business. For example, requirements for additional staff training, policies or processes should only be imposed where they are necessary to mitigate a risk specifically arising from foreign ownership or control.

Where an issue can appropriately be dealt with under another Australian regulatory framework, that should generally remain the appropriate mechanism. This would avoid unnecessary differential treatment and ensure conditions remain connected to the purpose of the foreign investment regime. The FSC has previously raised similar concerns about conditions being imposed in relation to matters that are unrelated to foreign investment risk.

RECOMMENDATION 1

Conditions should not duplicate obligations already imposed under Australian law and should only impose additional requirements where there is a clear and proportionate connection to an identified risk arising from foreign ownership or control.

Streamline tax conditions and reporting

The FSC considers tax conditions should be a priority for the review. Members report that tax-related conditions attached to some approvals can impose significant compliance obligations in addition to investors' ordinary Australian tax obligations.

Member feedback identifies overlapping requirements to notify certain disposals at least 60 days in advance, notify other arrangements or restructures at least 28 days in advance, and subsequently provide annual reporting on compliance with the same tax conditions. Where information has already been provided through an event-based notification, requiring substantially the same information to be provided again through an annual report provides limited additional regulatory value.

There is also duplication across government processes. Information reported under foreign investment tax conditions can be materially similar to information subsequently requested by the ATO through assurance activity, including Combined Assurance Reviews. Treasury and the ATO should make greater use of information already held by Government rather than requiring investors to provide substantially the same information again.

Multiple reporting channels further increase complexity. Depending on the obligation, information may need to be provided through the Foreign Investment Portal, directly to the ATO or through other foreign investment reporting processes. Members have identified uncertainty about which obligation and timeframe applies and how the different requirements interact.

A more streamlined approach should:

- remove repeat annual reporting where information has already been notified;
- apply appropriate materiality thresholds to focus reporting on matters of regulatory significance;
- consolidate reporting channels wherever practicable; and
- make greater use of information already held by Treasury and the ATO.

The length and complexity of tax conditions can also have a direct commercial impact. Conditions must be interpreted, operationalised and monitored, often requiring significant legal and tax resources. This can increase costs and delay transactions and, for some projects, contribute to investment becoming commercially unviable.

RECOMMENDATION 2

Treasury and the ATO should substantially simplify standard tax conditions, remove duplicative reporting requirements and adopt a coordinated 'tell-us-once' approach supported by appropriate materiality thresholds.

Improve clarity and administration of conditions

Members have identified that some conditions in No Objection Notifications are difficult to interpret and apply in practice. This can include uncertainty about the entities and arrangements to which a condition applies, the interaction between different reporting requirements, and the relevant reporting timeframe. Significant time and resources can consequently be required simply to determine how a condition operates.

There can also be uncertainty about what occurs once a notification is made. For example, investors may not know whether reporting a proposed transaction will lead to further ATO or FIRB consideration, whether additional information will be sought, or whether any further approval will effectively be required. This makes it difficult to plan transaction timelines with certainty.

Conditions should therefore clearly identify their scope, reporting channel and timeframe and, where further agency consideration may occur, investors should have greater clarity about the process and expected response timeframes.

Where Treasury identifies that a standard or commonly applied condition is ineffective or duplicative, the FSC also considers that it should be addressed systematically. Investors should not be required to incur additional fees or make individual variation applications to obtain relief from a condition the Government has itself determined is no longer necessary.

RECOMMENDATION 3

Treasury should improve the clarity and administration of conditions, including clearer scope, reporting channels and response timeframes, and should apply the outcomes of this review consistently to commonly used conditions.

Changes during the assessment process

Members have also identified a related issue where transaction details change while a foreign investment application is under assessment. While this extends beyond the conditions attached to existing approvals, it is relevant to the Government's broader objective of reducing unnecessary regulatory friction.

Applicants are encouraged to lodge applications early, but changes to commercial arrangements during negotiations are commonplace. Members have reported that such changes can effectively restart or materially extend assessment timeframes even where they do not materially change the underlying foreign investment risk. This can place applicants at a competitive disadvantage and increase execution risk.

The FSC encourages Treasury to consider greater flexibility for routine or non-material changes that do not alter the underlying risk assessment, without unnecessarily resetting the assessment period.