

NOTIFY THE ATO OF YOUR WATER RIGHTS: FOREIGN REGISTER OF WATER ENTITLEMENTS IS NOW IN PLACE

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NATIONAL WATER REGISTER NOW OPEN

As of 1 July 2017, foreign persons must now register their interests in relevant water entitlements with the Australian Taxation Office (**ATO**). The Water Register has been combined with the existing register of foreign ownership of agricultural land and registration is available on the ATO website.

All foreign persons have until 30 November 2017 to register their details with the ATO. After this stocktake period, foreign persons will be required to update the details of their ownership of water entitlements within 30 days of the end of each financial year.

WHICH WATER ENTITLEMENTS MUST BE REGISTERED?

Foreign persons must register their interests in any 'registrable water entitlement' or 'contractual water right'.

Registrable water entitlements include:

- an irrigation right, being a right against an irrigation infrastructure operator to receive water; or
- a right to take or hold water from a water resource in Australia.

Registrable water entitlements do not include stock and domestic rights and harvestable rights used for stock and domestic purposes, riparian rights, water allocations or rights held by an irrigation infrastructure operator to the extent that either another person holds an irrigation right in relation to that right, or they are for 'conveyance water'.

A contractual water right is a right under a contract to all or part of another person's registrable water entitlement or water allocation. These must be registered.

Contractual water rights are only intended to include entitlements which are leased or otherwise obtained from a person other than an irrigation infrastructure operator. Contractual water rights only need to be registered if the term of the contract, including any renewals or extensions at the end of 30 November 2017, will exceed 5 years.

REGISTRATION DURING THE STOCKTAKE PERIOD – FROM 1 JULY 2017 TO 30 NOVEMBER 2017

The stocktake period between 1 July 2017 and 30 November 2017 is intended to collect information on the registrable water entitlements and contractual water rights held by foreign persons as at 30 November 2017.

This information will form the basis of reports on the foreign ownership of water access entitlements in the future. If a foreign person registers their interest during the stocktake period, but then either sells the interest, ceases to be a foreign person or the volume of water registered changes, the foreign person will need to update their registration with the ATO before the later of 1 December 2017 or 30 days after the event.

REGISTRATION AFTER THE STOCKTAKE PERIOD – FROM 1 DECEMBER 2017

From 1 December 2017, foreign persons must notify the ATO of certain events regarding their interests in registrable water entitlements or contractual water rights each year. A foreign person may register at any time during the year, but must register by no later than 30 days after the end of the financial year in which the event occurred.

The events requiring registration include acquisitions and disposals, or changes in volume, of registrable water entitlements or contractual water rights or becoming or ceasing to be a foreign person.

If a registrable water entitlement is acquired and disposed of during the same financial year, there is no need to notify the ATO of either event.

Foreign persons who anticipate multiple transactions during the financial year should wait until the end of the year to register all events and volumes of water held.

PENALTIES FOR FAILURE TO NOTIFY

Foreign persons who do not notify the ATO on time, or who provide false information, may be liable for significant penalties in respect of each water right under the *Income Tax Assessment Act 1936 (Cth)* and the *Taxation Administration Act 1953 (Cth)*.

RECOMMENDATIONS

Foreign persons who hold interests in water entitlements should ensure that any water rights requiring registration are notified on the Water Register by 30 November 2017. They should also familiarise themselves with the ongoing annual reporting requirements.

The existing obligations in respect of registration of interests in agricultural land continue to apply. Please get in touch with us if you would like further information about the Water Register or whether your water rights must be registered.

The Land and Water Register is available on the ATO website here: <https://www.ato.gov.au/General/Foreign-investment-in-Australia/Start-your-registration/>

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