



Foreign Acquisitions and Takeovers Fees Imposition Act 2015

No. 152, 2015

Compilation No. 1

Compilation date:	24 June 2017
Includes amendments up to:	Act No. 69, 2017
Registered:	11 July 2017

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* that shows the text of the law as amended and in force on 24 June 2017 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to impose, as taxes, fees under the *Foreign Acquisitions and Takeovers Act 1975*, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 November 2015
2. Sections 5 to 13	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) the commencement of Schedule 1 to the <i>Foreign Acquisitions and Takeovers Legislation Amendment Act 2015</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b)	1 December 2015 (paragraph (b) applies)

Section 3

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	does not occur.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Extension to external Territories

This Act extends to every external Territory.

4 Definitions

- (1) In this Act:

base amount has the meaning given by subsection 12(8).

base financial year has the meaning given by subsection 12(8).

Foreign Acquisitions Act means the *Foreign Acquisitions and Takeovers Act 1975*.

indexed amount has the meaning given by subsection 12(1).

index number has the meaning given by subsection 12(8).

internal reorganisation means an acquisition by an entity (the **first entity**) of:

- (a) an interest in securities in another entity if:
- (i) both entities are subsidiaries of the same holding entity;
 - or
 - (ii) the other entity is a subsidiary of the first entity; or
- (b) an interest in an asset or Australian land from another entity if:

- (i) both entities are subsidiaries of the same holding entity;
or
- (ii) the other entity is the holding entity of the first entity; or
- (iii) the other entity is a subsidiary of the first entity.

quarter has the meaning given by subsection 12(8).

this Act includes the regulations.

- (2) Subject to subsection (1), an expression used in this Act that is defined in the Foreign Acquisitions Act or regulations made for the purposes of that Act has the same meaning in this Act as it has in that Act or those regulations.

Section 5

Part 2—Imposition and amounts of fees

5 Imposition of fees

A fee payable under Part 6 of the Foreign Acquisitions Act is imposed as a tax by this section.

6 Fees for applications relating to exemption certificates

Fees generally

- (1) The amount of the fee for an application for an exemption certificate, or an application for a variation of an exemption certificate, is worked out in accordance with the following table.

Fees for certificates		
Item	The amount of the fee for an application for ...	is ...
1	an exemption certificate under section 57 (new dwellings) of the Foreign Acquisitions Act	\$25,700.
2	an exemption certificate under section 58 (foreign persons) of the Foreign Acquisitions Act	\$35,000.
3	an exemption certificate under section 59 (established dwellings) of the Foreign Acquisitions Act	(a) if the application specifies that the consideration for the acquisition will be \$1 million or less—\$5,500; and (b) if the application specifies that the consideration for the acquisition will be more than \$1 million, and \$10 million or less—the amount worked out under subsection (2); and (c) if the application specifies that the

Section 6

Fees for certificates		
Item	The amount of the fee for an application for ...	is ...
		consideration for the acquisition will be more than \$10 million—the amount worked out under subsection (2A).
4	an exemption certificate given under regulations made for the purposes of section 63 of the Foreign Acquisitions Act	<p>(a) if the exemption certificate is a residential land (other than established dwellings) certificate within the meaning of those regulations—the amount, not exceeding the amount of the fee that would be payable if the application were for an exemption certificate under section 59 of the Foreign Acquisitions Act, that is:</p> <p>(i) prescribed by regulations made for the purposes of this paragraph; or</p> <p>(ii) worked out using the method prescribed by regulations made for the purposes of this paragraph; or</p> <p>(b) otherwise—the amount not exceeding \$35,000 that is prescribed by regulations, or worked out using the method prescribed by regulations, made for the purposes of this paragraph.</p>
5	a variation of an exemption certificate under section 62 of the Foreign Acquisitions Act	<p>(a) \$5,100, if the application is for a variation of an exemption certificate given under sections 57 and 59 of the Foreign Acquisitions Act; or</p> <p>(b) \$5,100, if:</p> <p>(i) the application is for a variation of an exemption certificate given under regulations made for the purposes of section 63 of the Foreign Acquisitions Act; and</p> <p>(ii) the exemption certificate given under the regulations relates to residential land; or</p>

Section 6

Fees for certificates

Item	The amount of the fee for an application for ...	is ...
		(c) \$10,100, if the application is for a variation of any other exemption certificate under the Foreign Acquisitions Act, or provided for in regulations made under section 63 of that Act.

Note 1: For table item 1, see also subsection (3).

Note 2: **Consideration** is defined by regulations made for the purposes of the Foreign Acquisitions Act (see section 4 of that Act).

Note 3: See also sections 11 (regulations may lower fees) and 12 (indexation of fees) of this Act.

Fees for applications for exemption certificates—consideration more than \$1 million, and \$10 million or less

- (2) For the purposes of paragraph (b) of item 3 of the table in subsection (1), the amount of the fee is worked out as follows:

Method statement

Step 1. Apply the following formula:

$$\frac{\text{Amount of consideration specified in the application}}{1,000,000}$$

Round the resulting amount down to the nearest whole number, if necessary.

Step 2. Multiply the step 1 amount by \$10,000.

Step 3. Multiply the step 2 amount by 1.015. Round the resulting amount down to the nearest multiple of \$100, if necessary.

Section 6

- Step 4. Add to the step 3 amount the amount that is 10% of the step 3 amount. Round the resulting amount down to the nearest multiple of \$100, if necessary.
- Step 5. The step 4 amount is the amount of the fee.

Fees for applications for exemption certificates—consideration more than \$10 million

- (2A) For the purposes of paragraph (c) of item 3 of the table in subsection (1), the amount of the fee is worked out as follows:

Method statement

- Step 1. Apply the following formula:

$$\frac{\text{Amount of consideration specified in the application}}{1,000,000}$$

Round the resulting amount down to the nearest whole number, if necessary.

- Step 2. Multiply the step 1 amount by \$10,000.
- Step 3. Multiply the step 2 amount by 1.030. Round the resulting amount down to the nearest multiple of \$100, if necessary.
- Step 4. The step 3 amount is the amount of the fee.

Fees for exemption certificates given under section 57 of the Foreign Acquisitions Act—6 monthly fees for developers

- (3) The amount of a fee that is payable by a developer mentioned in subsection 113(2) of the Foreign Acquisitions Act at the end of a 6 month period is the total of the amounts that are payable under

Section 7

subsection (4) of this section for each new dwelling acquisition that occurs during the period.

Note: Subsections 113(3) and (4) of the Foreign Acquisitions Act define **6 month period** and **new dwelling acquisition**.

- (4) The amount that is payable for a new dwelling acquisition is the amount that, at the time of the acquisition, would have been payable for the acquisition under item 3 of the table in subsection 7(1) of this Act assuming the acquisition had been a notifiable action.

7 Fees for giving notice of notifiable actions

- (1) The amount of the fee for giving a notice of a notifiable action under section 81 of the Foreign Acquisitions Act is worked out in accordance with the following table.

Fees for giving notice of notifiable actions		
Item	If the notifiable action is ...	the amount of the fee is ...
1	(a) to acquire a direct interest in an Australian entity or Australian business that is an agribusiness; or (b) to acquire a substantial interest in an Australian entity	(a) if the consideration for the acquisition is \$10 million or less—\$2,000; and (b) if the consideration is more than \$10 million, and \$1 billion or less—\$25,300; and (c) if the consideration is more than \$1 billion—\$101,500.
2	to acquire an interest in agricultural land	(a) if the consideration for the acquisition is \$2 million or less—\$2,000; and (b) if the consideration for the acquisition is more than \$2 million, and \$10 million or less—\$25,300; and (c) if the consideration is more than \$10 million—\$101,500.
3	to acquire an interest in residential	(a) if the consideration for the

Section 7

Fees for giving notice of notifiable actions		
Item	If the notifiable action is ...	the amount of the fee is ...
	land	acquisition is \$1 million or less—\$5,500; and (b) if the consideration for the acquisition is more than \$1 million, and \$10 million or less—the amount worked out under subsection (2); and (c) if the consideration for the acquisition is more than \$10 million—the amount worked out under subsection (3).
4	to acquire an interest in commercial land (whether the land is vacant or not)	(a) if the consideration for the acquisition is \$10 million or less—\$2,000; and (b) if the consideration is more than \$10 million, and \$1 billion or less—\$25,300; and (c) if the consideration is more than \$1 billion—\$101,500.
5	to acquire an interest in a mining or production tenement	\$25,300.
6	to take a notifiable action prescribed by regulations made for the purposes of section 48 of the Foreign Acquisitions Act	the amount not exceeding \$101,500 that is prescribed by regulations, or worked out using the method prescribed by regulations, made for the purposes of this item.

Note 1: **Consideration** is defined by regulations made for the purposes of the Foreign Acquisitions Act (see section 4 of that Act).

Note 2: See also sections 10 (fees for internal reorganisations), 11 (regulations may lower fees) and 12 (indexation of fees) of this Act.

Section 7

Fees for acquisition of interests in residential land—consideration more than \$1 million, and \$10 million or less

- (2) For the purposes of paragraph (b) of item 3 of the table in subsection (1), the amount of the fee is worked out as follows:

Method statement

Step 1. Apply the following formula:

$$\frac{\text{Consideration for the acquisition}}{1,000,000}$$

Round the resulting amount down to the nearest whole number, if necessary.

Step 2. Multiply the step 1 amount by \$10,000.

Step 3. Multiply the step 2 amount by 1.015. Round the resulting amount down to the nearest multiple of \$100, if necessary.

Step 4. Add to the step 3 amount the amount that is 10% of the step 3 amount. Round the resulting amount down to the nearest multiple of \$100, if necessary.

Step 5. The step 4 amount is the amount of the fee.

Fees for acquisition of interests in residential land—consideration more than \$10 million

- (3) For the purposes of paragraph (c) of item 3 of the table in subsection (1), the amount of the fee is worked out as follows:

Method statement

Step 1. Apply the following formula:

$$\frac{\text{Consideration for the acquisition}}{1,000,000}$$

Round the resulting amount down to the nearest whole number, if necessary.

Step 2. Multiply the step 1 amount by \$10,000.

Step 3. Multiply the step 2 amount by 1.030. Round the resulting amount down to the nearest multiple of \$100, if necessary.

Step 4. The step 3 amount is the amount of the fee.

8 Other fees

- (1) The amounts of the following fees are worked out in accordance with the following table:
- (a) a fee for giving a notice of a proposal to take an action that is not a notifiable action (see items 1, 2 and 4);
 - (b) a fee for a person:
 - (i) in relation to whom an order was made under Subdivision A of Division 2 of Part 3 of the Foreign Acquisitions Act; or
 - (ii) to whom a no objection notification was given; if the person did not give a notice to the Treasurer relating to the action specified in the order or notification (see items 1 to 4).

Part 2 Imposition and amounts of fees

Section 8

Other fees		
Item	If the action is ...	the amount of the fee is ...
1	(a) to acquire an interest in securities in an entity that is not a substantial interest in the entity; or (b) to issue securities in an entity; or (c) to acquire interests in assets of an Australian business	(a) if the consideration for the acquisition is \$10 million or less—\$2,000; and (b) if the consideration for the acquisition is more than \$10 million, and \$1 billion or less—\$25,300; and (c) if the consideration is more than \$1 billion—\$101,500.
2	(a) to enter an agreement mentioned in paragraph 40(2)(d) of the Foreign Acquisitions Act; or (b) to alter a constituent document of an entity as mentioned in paragraph 40(2)(e) of the Foreign Acquisitions Act; or (c) to enter or terminate a significant agreement with an Australian business	\$10,100.
3	to take a significant action that is a notifiable action	the amount that would have been payable under section 7 or any other provision of this Act in relation to the action if a notice relating to the action had been given.
4	to take a significant action that is: (a) prescribed by regulations made for the purposes of section 44 of the Foreign Acquisitions Act; and (b) not a notifiable action	the amount not exceeding \$100,000, that is prescribed by regulations, or worked out using the method prescribed by regulations, made for the purposes of this item.
	Note 1:	Consideration is defined by regulations made for the purposes of the Foreign Acquisitions Act (see section 4 of that Act).
	Note 2:	See also sections 10 (fees for internal reorganisations), 11 (regulations may lower fees) and 12 (indexation of fees) of this Act.

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- (2) The amount of the fee for a person who applies under subsection 76(6) of the Foreign Acquisitions Act for a variation of a no objection notification is:
- (a) if the action specified in the notification is an acquisition of an interest in residential land—\$5,100; and
 - (b) otherwise—\$10,100.

9 Fees where more than one action taken

- (1) If one agreement covers more than one action for which a fee is payable:
- (a) a separate fee is payable in relation to each acquisition of an interest in residential land covered by the agreement; and
 - (b) if the agreement covers more than one other action (disregarding any acquisitions of interests in residential land)—the amount of the fee payable is the highest of the amounts for those actions.

Note: Subsection (2) may affect how to determine the amount of a fee for a single action that may be characterised in more than one way.

- (2) If either or both of the following apply:
- (a) a single action is covered by more than one of the following (because the action is an action of more than one kind):
 - (i) paragraph 40(2)(a), (b), (c), (d) or (e) of the Foreign Acquisitions Act;
 - (ii) paragraph 41(2)(a), (b) or (c) of the Foreign Acquisitions Act;
 - (iii) paragraph 43(a) of the Foreign Acquisitions Act;
 - (iv) a provision of regulations made for the purposes of section 44 of the Foreign Acquisitions Act;
 - (b) a single action relating to land is covered by more than one subsection of section 52 of the Foreign Acquisitions Act (because the land is land of more than one kind);
- the amount of the fee payable in relation to the single action is the highest amount that applies.

Section 10

10 Fees for internal reorganisations

Despite sections 7 to 9, a fee payable in relation to one or more actions that constitute an internal reorganisation is \$10,100.

Note 1: A separate fee may be payable in relation to any other action covered by the same agreement as the internal reorganisation that is not part of the internal reorganisation.

Note 2: See also section 12 (indexation of fees).

11 Regulations may lower fees specified in this Part

- (1) Despite sections 6 to 10, instead of the amount of a fee specified in this Part (or the amount indexed under section 12) being payable in the circumstances specified, a lower amount (including a nil amount) is payable if the regulations prescribe, for those circumstances:
 - (a) the lower amount; or
 - (b) a method of working out the lower amount.
- (2) Without limiting subsection (1) or subsection 33(3A) of the *Acts Interpretation Act 1901*, if this Part specifies an amount of a fee that is payable in specified circumstances, the regulations may prescribe an amount or method in relation to only some of those specified circumstances.

Note: For example, the regulations may prescribe a lower amount for the purposes of item 4 of the table in subsection 7(1) only in relation to acquisitions of interests in commercial land that is not vacant.

12 Indexation of fees

- (1) The amount of a fee specified in this Part or in regulations made for the purposes of this Part is to be indexed each financial year (except the base financial year) in accordance with this section. This section explains how to work out the amount (the ***indexed amount***) of a fee for a financial year.

Indexation

- (2) The indexed amount of the fee for the financial year is worked out in accordance with the formula:

Base amount of the fee × Indexation factor for the financial year

- (3) The ***indexation factor*** for the financial year is the number worked out by dividing:

- (a) the sum of the index numbers for the quarters of the 12 month period ending on 31 March immediately before the financial year; by
- (b) the sum of the index numbers for the quarters of the 12 month period ending on 31 March in the financial year immediately before the base financial year for the base amount.

- (4) The indexation factor is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

- (5) Fees are to be worked out under this section:

- (a) using only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and
- (b) disregarding index numbers that are published more than 2 weeks after the original publication in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

Rounding

- (6) If an indexed amount worked out under subsection (2) would not be a multiple of \$100, the indexed amount is rounded down to the nearest multiple of \$100.

Section 12

Indexation only to increase fees

- (7) However, if the indexed amount worked out under subsection (2) for a year (the **current year**) (after any rounding under subsection (6)) is less than the indexed amount for the previous financial year, the indexed amount for the current year is the indexed amount for the previous financial year.

Definitions

- (8) In this Act:

base amount of a fee means the amount of the fee specified in this Part or in regulations made for the purposes of this Part.

base financial year for a base amount of a fee means:

- (a) if the amount is specified in this Part or in regulations made for the purposes of this Part when section 5 commences—the financial year in which that commencement occurs; or
- (b) if, after that commencement occurs, the amount is specified in this Part or in regulations made for the purposes of this Part—the financial year in which the amount is so specified; or
- (c) if the amount is specified in regulations made for the purposes of section 11—the financial year in which the amount is so specified; or
- (d) if the amount was specified in this Part or in regulations made for the purposes of this Part, and is otherwise changed (whether the change is the first change or a later change) by an amending Act or amending regulations, as the case requires—the financial year in which the amount is so changed.

index number, for a quarter, means the All Groups Consumer Price Index number from the original series, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

quarter means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April.

- (9) For the purposes of this section:
- (a) the following amounts are not fees:
 - (i) the amounts specified in the method statements in subsections 6(2) and (2A) and 7(2) and (3) (except the amount specified in the final step in any of those method statements);
 - (ii) an amount of \$1 million, \$2 million, \$10 million or \$1 billion specified in an item of the table in subsection 6(1), 7(1) or 8(1); and
 - (b) the amounts specified in the following are taken to be fees:
 - (i) item 4 of the table in subsection 6(1);
 - (ii) item 6 of the table in subsection 7(1);
 - (iv) item 4 of the table in subsection 8(1).

Note: Those provisions set out a cap on the amount of a fee.

Part 3—Regulations

13 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by the regulations; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Foreign Acquisitions and Takeovers Fees Imposition Act 2015	152, 2015	25 Nov 2015	s 5–13: 1 Dec 2015 (s 2(1) item 2) Remainder: 25 Nov 2015 (s 2(1) item 1)	
Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining and Other Measures) Act 2017	69, 2017	23 June 2017	24 June 2017 (s 2(1) item 1)	Sch 1 (items 12, 13)

Endnote 4—Amendment history

Provision affected	How affected
Part 2	
s 6	am No 69, 2017
s 7	rs No 69, 2017
s 8	am No 69, 2017
s 10	am No 69, 2017
s 11	am No 69, 2017
s 12	am No 69, 2017
