



Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015

Select Legislative Instrument No. 215, 2015

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd),
Governor-General of the Commonwealth of Australia, acting with the
advice of the Federal Executive Council, make the following regulation.

Dated 26 November 2015

Peter Cosgrove
Governor-General

By His Excellency's Command

Scott Morrison
Treasurer

OPC61510 - A

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Part 1—Preliminary

1 Name

This is the *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015*.

2 Commencement

- (1) Each provision of this instrument 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. The whole of this instrument	The later of: (a) the start of the day after this instrument is registered; and (b) immediately after the commencement of section 5 of the <i>Foreign Acquisitions and Takeovers Fees Imposition Act 2015</i> .	1 December 2015

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*.

Section 4

4 Definitions

- Note: A number of expressions used in this instrument are defined in the following (see subsection 4(2) of the Act):
- (a) the Act (including the expressions Foreign Acquisitions Act and internal reorganisation);
 - (b) the Foreign Acquisitions Act (including the expressions Australian business, Australian entity, exemption certificate, foreign government investor and notifiable action);
 - (c) the Foreign Acquisitions Regulation (including the expressions Australian media business, consideration, direct interest and starts an Australian business).

In this instrument:

Act means the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*.

Foreign Acquisitions Regulation means the *Foreign Acquisitions and Takeovers Regulation 2015*.

wholly-owned group has the meaning given by the *Income Tax Assessment Act 1997* (with appropriate changes).

Part 2—Fees

Division 1—Simplified outline of this Part

5 Simplified outline of this Part

This Part prescribes fees for the purposes of the Act.

Division 2 prescribes fees for things that are prescribed by the Foreign Acquisitions Regulation.

Division 3 lowers fees that would otherwise be payable under the Act.

Division 2—Fees for things prescribed by the Foreign Acquisitions Regulation

6 Fees for exemption certificates prescribed by the Foreign Acquisitions Regulation

- (1) For item 4 of the table in subsection 6(1) of the Act, a fee of \$25 000 is payable for an application for an exemption certificate under section 42 or 43 of the Foreign Acquisitions Regulation.

Note 1: See also section 12 of the Act (indexation of fees).

Note 2: Section 42 of the Foreign Acquisitions Regulation deals with exemption certificates for underwriters. Section 43 of the Foreign Acquisitions Regulation deals with exemption certificates for certain interests in tenements and mining, production or exploration entities.

- (2) However, a fee for an application (the *section 43 application*) for an exemption certificate under section 43 of the Foreign Acquisitions Regulation payable by a person is nil if:
- (a) another fee is payable, in relation to an application for an exemption certificate under section 58 of the Foreign Acquisitions Act, by:
 - (i) the person; or
 - (ii) an entity that is a member of the same wholly-owned group as the person; and
 - (b) that application and the section 43 application were made within 7 days of each other.

7 Fees for giving notice of notifiable actions prescribed by the Foreign Acquisitions Regulation

For item 6 of the table in subsection 7(1) of the Act, the amount of the fee for giving a notice of a notifiable action prescribed by Division 1 of Part 5 of the Foreign Acquisitions Regulation is worked out under the following table.

Section 7

Fees for giving notice of notifiable actions		
Item	If the notifiable action is ...	the amount of the fee is ...
1	(a) to acquire an interest of at least 5% in an entity or business that wholly or partly carries on an Australian media business (see section 55 of the Foreign Acquisitions Regulation); or (b) for a foreign government investor to acquire a direct interest in an Australian entity or Australian business (see paragraph 56(1)(a) of the Foreign Acquisitions Regulation)	(a) if the consideration for the acquisition is \$1 billion or less—\$25 000; and (b) otherwise—\$100 000.
2	for a foreign government investor to: <ul style="list-style-type: none"> (a) start an Australian business (see paragraph 56(1)(b) of the Foreign Acquisitions Regulation); or (b) to acquire a legal or equitable interest in a tenement (see subparagraph 56(1)(c)(i) of the Foreign Acquisitions Regulation); or (c) to acquire an interest of at least 10% in securities in a mining, production or exploration entity (see subparagraph 56(1)(c)(ii) of the Foreign Acquisitions Regulation) 	\$10 000.

Division 3—Lowering fees

8 Lowering fees

This Division prescribes, for section 11 of the Act, a lower amount for a fee that would otherwise be payable in circumstances specified in the Act.

9 Fee would otherwise be more than 25% of consideration

A fee of \$1 000 is payable if:

- (a) the amount of the fee that would otherwise be payable is specified in sections 7 to 9 of the Act in the circumstances specified; and
- (b) the fee is payable for:
 - (i) giving a notice of notifiable action under section 81 of the Foreign Acquisitions Act; or
 - (ii) giving a notice of a proposal to take an action that is not a notifiable action; and
- (c) the action is the acquisition of an interest in securities, assets, Australian land or a mining, production or exploration tenement other than an action covered by item 2 of the table in subsection 8(1) of the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*; and
- (d) the fee specified in the relevant section of the Act is more than 25% of the consideration for the acquisition.

Note 1: See also section 12 of the Act (indexation of fees).

Note 2: Item 2 of the table in subsection 8(1) of the Act deals with actions to enter or terminate agreements or alter constituent documents.

10 Majority owners

The amount of a fee is nil if:

- (a) the amount of the fee that would otherwise be payable is specified in sections 7 to 9 of the Act in the circumstances specified; and
- (b) the fee is payable for:

- (i) giving a notice of notifiable action under section 81 of the Foreign Acquisitions Act; or
- (ii) giving a notice of a proposal to take an action that is not a notifiable action; and
- (c) the action is the acquisition by a foreign person of an interest in securities in an entity covered by paragraph 40(2)(b) of the Foreign Acquisitions Act; and
- (d) before the acquisition, the foreign person holds an interest of more than 50% in the entity.

Note: A higher fee may apply if the action may be characterised in more than one way (see subsection 9(2) of the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*).

11 Acquisition of securities in a land entity

- (1) This section applies (subject to subsection (6)) if:
 - (a) a person acquires an interest in securities in a land entity; and
 - (b) the land held by the entity is covered by more than one item of items 2 to 5 in the table in subsection 7(1) of the Act; and
 - (c) the fee that would, apart from this section, be payable under paragraph 9(2)(b) of the Act for giving a notice of a notifiable action under section 81 of the Foreign Acquisitions Act is higher than the fee worked out under this section.

Fee payable based on dominant land holding

- (2) The fee that is payable under section 7 of the Act for giving the notice is the fee that is payable for acquiring an interest in the entity's dominant land holding.

Working out an entity's dominant land holding

- (3) To determine the entity's dominant land holding, make a reasonable assessment of the value of interests in each of the following kinds of land held by the entity:
 - (a) agricultural land that is used wholly and exclusively for a primary production business;
 - (b) commercial land;
 - (c) residential land;
 - (d) mining or production tenements.

Section 12

- (4) The entity's *dominant land holding* is:
 - (a) except if the value, as assessed under subsection (3), is greatest for commercial land—the kind of land whose value, as assessed under that subsection, is the greatest; or
 - (b) if the value, as assessed under subsection (3), is greatest for commercial land—the kind of land whose value, as assessed under subsection (5), is greatest.
- (5) For the purposes of paragraph (4)(b), make a reasonable assessment of the value of interests held by the entity in:
 - (a) commercial land that is vacant; and
 - (b) commercial land that is not vacant.

Actions of more than one kind

- (6) However, this section does not apply if:
 - (a) a fee is payable under paragraph 9(2)(a) of the Act (actions of more than one kind); and
 - (b) that fee is higher than the fee worked out under this section.

12 Internal reorganisations by foreign government investors involving tenements

- (1) A fee of \$10 000 is payable in relation to one or more actions if:
 - (a) a foreign government investor (the *first entity*) acquires a legal or equitable interest in a tenement that is not an interest in Australian land from another entity; and
 - (b) any of the following applies:
 - (i) both entities are subsidiaries of the same holding entity;
 - (ii) the other entity is the holding entity of the first entity;
 - (iii) the other entity is a subsidiary of the first entity.
- (2) However, the fee payable by the foreign government investor is nil if:
 - (a) another fee is payable, in relation to an internal reorganisation under section 10 of the Act, by:
 - (i) the foreign government investor; or
 - (ii) an entity that is a member of the same wholly-owned group as the foreign government investor; and

- (b) the acquisition mentioned in paragraph (1)(a) forms part of the same internal reorganisation (within the ordinary meaning of the term) as the internal reorganisation mentioned in paragraph (a) of this subsection.

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

13 Acquiring interests in residential land jointly

- (1) The amount of a fee that is payable by an individual under item 2 of the table in subsection 7(1) of the Act, for giving a notice of a notifiable action under section 81 of the Foreign Acquisitions Act, is nil if:
 - (a) the notice relates to an acquisition of an interest in residential land; and
 - (b) the interest is acquired, or is to be acquired, by the individual as a joint tenant with one or more other individuals; and
 - (c) the interest is acquired, or is to be acquired, under a single agreement; and
 - (d) a fee is paid by one of the other individuals in relation to that individual's acquisition of the interest in the land.
- (2) To avoid doubt, subsection (1) does not affect the amount of consideration that is taken into account in working out the fee mentioned in paragraph (1)(d).

14 Actions taken by wholly-owned groups

- (1) The amount of a fee that is payable by an entity is nil if:
 - (a) the fee is payable in relation to an acquisition by the entity of:
 - (i) a direct interest in an entity or Australian business that is an agribusiness; or
 - (ii) an interest in securities in an entity; or
 - (iii) an interest in assets of an Australian business; or
 - (iv) an interest in Australian land (except residential land) or a tenement; and

Part 2 Fees

Division 3 Lowering fees

Section 14

- (b) one or more other entities that are members of the same wholly-owned group have acquired, or are to acquire, one or more other interests in the entity, business, securities, assets, land or tenement; and
 - (c) either:
 - (i) a single agreement deals with the acquisitions mentioned in paragraphs (a) and (b); or
 - (ii) a notice is given stating that the entities propose to acquire the interests; and
 - (d) a fee is paid, by one of the other entities, in relation to that entity's acquisition of the interests mentioned in paragraph (b).
- (2) To avoid doubt, subsection (1) does not affect the amount of consideration that is taken into account in working out the fee mentioned in paragraph (1)(d).