

SUMMARY OF PROPOSED FIRB FEE REGIME

Proposed commencement date of 1 January 2021 for new FIRB fee regime.

Current Act	<i>Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth)</i>
Current Regs	<i>Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth)</i>
New Regs	<i>Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Cth)</i>

Note: this document does not cover vacancy fees.

GENERAL FEE RULES REGARDING NO OBJECTION NOTIFICATIONS

Category	Current position	Proposed new position ¹
Entities and businesses		
Acquire direct interest in an Australian agribusiness	\$2,100 for consideration ≤\$10m \$26,700 for consideration >\$10m and ≤\$1bn \$107,100 for consideration >\$1bn (Current Act, s7(1) item 1(a))	\$6,600 if consideration ≤\$50m If consideration >\$50m, fee is lesser of: <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'. (New Regs, s8(1), 9(3)(c), 10, 11, 14(a)(i), 14(a)(iv))
Acquire substantial interest in an Australian entity	\$2,100 for consideration ≤\$10m \$26,700 for consideration >\$10m and ≤\$1bn \$107,100 for consideration >\$1bn (Current Act, s7(1) item 1, s8(1) item 1(b))	\$6,600 if consideration ≤\$50m If consideration >\$50m, fee is lesser of: <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'. (New Regs, s8(1), 9(3)(c), 10, 11)
Acquire direct interest in a national security business	N/A	\$6,600 if consideration ≤\$50m If consideration >\$50m, fee is lesser of: <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'. (New Regs, s8(1), 9(3)(c), 10, 11, 12 item 1)
Acquire ≥5% interest in an Australian media business	\$2,100 for consideration ≤\$10m \$26,700 for consideration >\$10m and ≤\$1bn \$107,100 for consideration >\$1bn (Current Regs, s7 item 1(a))	\$6,600 if consideration ≤\$50m If consideration >\$50m, fee is lesser of: <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'. (New Regs, s8(1), 9(3)(d), 10, 11)

¹ Note that fees are also payable within 30 days after an action has been called in by the Treasurer.

Category	Current position	Proposed new position ¹
FGI acquires direct interest in an Australian entity or Australian business	<p>\$2,100 for consideration ≤\$10m</p> <p>\$26,700 for consideration >\$10m and ≤\$1bn</p> <p>\$107,100 for consideration >\$1bn</p> <p>(Current Regs, s7 item 1(b))</p>	<p>\$6,600 if consideration ≤\$50m</p> <p>If consideration >\$50m, fee is lesser of:</p> <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. <p>But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'.</p> <p>(New Regs, s8(1), 9(3)(e), 10, 11)</p>
Acquire direct interest in an entity or Australian business (reviewable national security action)	N/A	<p>25% of:</p> <ul style="list-style-type: none"> ■ \$6,600 if consideration ≤\$50m ■ If consideration >\$50m, fee is lesser of: <ul style="list-style-type: none"> • \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and • \$500,000. ■ But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'. <p>(New Regs, s8(1), 9(3)(c), 10, 11, 16(1) item 1(a))</p>
Acquire interest in securities in an entity	<p>\$2,100 for consideration ≤\$10m</p> <p>\$26,700 for consideration >\$10m and ≤\$1bn</p> <p>\$107,100 for consideration >\$1bn</p> <p>(Current Act, s8(1) item 1(a))</p>	<p>\$6,600 if consideration ≤\$50m</p> <p>If consideration >\$50m, fee is lesser of:</p> <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. <p>But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'.</p> <p>(New Regs, s8(1), 9(3)(c), 10, 11, 14(a)(ii))</p>
Issue securities in an entity	<p>\$2,100 for consideration ≤\$10m</p> <p>\$26,700 for consideration >\$10m and ≤\$1bn</p> <p>\$107,100 for consideration >\$1bn</p> <p>(Current Act, s8(1) item 1(b))</p>	<p>\$6,600 if consideration ≤\$50m</p> <p>If consideration >\$50m, fee is lesser of:</p> <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. <p>But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'.</p> <p>(New Regs, s8(1), 9(3)(c), 10, 11, 14(a)(iii))</p> <p><u>But</u> if it's a reviewable national security action, fee is 25% of foregoing (New Regs, s16(1) item 1(b))</p>
Acquire interests in assets of an Australian business	<p>\$2,100 for consideration ≤\$10m</p> <p>\$26,700 for consideration >\$10m and ≤\$1bn</p> <p>\$107,100 for consideration >\$1bn</p> <p>(Current Act, s8(1) item 1(c))</p>	<p>\$6,600 if consideration ≤\$50m</p> <p>If consideration >\$50m, fee is lesser of:</p> <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. <p>But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'.</p> <p>(New Regs, s8(1), 9(3)(c), 10, 11, 14(a)(v))</p>

Category	Current position	Proposed new position ¹
<p>Enter into agreement relating to affairs of an entity under which senior officers must act in accordance with the directions of a foreign person who has a substantial interest</p> <p>Altering a constituent document of an entity as a result of which senior officers must act in accordance with the directions of foreign person who has a substantial interest</p> <p>Enter into or terminate significant agreement with Australian business</p>	\$10,600 (Current Act, s8(1) item 2)	<p>\$13,200 (New Regs, s15)</p> <p>But if it's a reviewable national security action, fee is 25% of foregoing (New Regs, s16(2))</p>
FGI starts new business	\$10,600 (Current Regs, s7 item 2(a))	\$2,000 (New Regs, s8(2))
Starting a national security business	N/A	\$2,000 (New Regs, s12 item 5)
Starting an Australian business	N/A	\$2,000 (New Regs, s16(1) item 5)
Land		
<p>Acquire interest in commercial land (including if notifiable national security action under new regime)</p>	<p>\$2,100 for consideration ≤\$10m</p> <p>\$26,700 for consideration >\$10m and ≤\$1bn</p> <p>\$107,100 for consideration >\$1bn</p> <p>(Current Act, s7(1) item 4)</p>	<p>\$6,600 if consideration ≤\$50m</p> <p>If consideration >\$50m, fee is lesser of:</p> <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. <p>But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'.</p> <p>(New Regs, s8(1), 9(3)(a), 10, 11, 12 item 3)</p> <p>But if it's a reviewable national security action, fee is 25% of foregoing (New Regs, s16(1) item 3)</p>
<p>Acquire interest in agricultural land (including if notifiable national security action under new regime)</p>	<p>\$2,100 for consideration ≤\$2m</p> <p>\$26,700 for consideration >\$2m and ≤\$10m</p> <p>\$107,100 for consideration >\$10m</p> <p>(Current Act, s7(1) item 2)</p>	<p>\$6,600 if consideration ≤\$2m</p> <p>If consideration >\$2m, fee is lesser of:</p> <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$2m (rounded down to nearest whole number)); and ■ \$500,000. <p>But if consideration is multiple of \$2m, replace 'Consideration' in formula with 'Consideration – \$1'.</p> <p>(New Regs, s8(1), 9(2), 10, 11, 12 item 2)</p> <p>But if it's a reviewable national security action, fee is 25% of foregoing (New Regs, s16(1) item 2)</p>

Category	Current position	Proposed new position ¹
Acquire interest in residential land	Starts at \$5,800 for ≤\$1m consideration. No cap. (Current Act, s7(1) item 3)	\$6,600 if consideration ≤\$1m If consideration >\$1m, fee is lesser of: <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$1m (rounded down to nearest whole number)); and ■ \$500,000. But if consideration is multiple of \$1m, replace 'Consideration' in formula with 'Consideration – \$1'. (New Regs, s8(1), 9(1), 10, 11)

Other

Internal reorganisations	\$10,600 (Current Act, s10)	\$13,200 (New Regs, s36)
Acquire interest in mining or production tenement (including if notifiable national security action under new regime)	\$26,700 (Current Act, s7(1) item 5)	\$6,600 if consideration ≤\$50m If consideration >\$50m, fee is lesser of: <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'. (New Regs, s8(1), 9(3)(b), 10, 11, 12 item 3) <u>But</u> if it's a reviewable national security action, fee is 25% of foregoing (New Regs, s16(1) item 4)
FGI acquires legal or equitable interest in a tenement, or ≥10% interest in mining, production or exploration entity	\$10,600 (New Regs, s7 item 2(b), 2(c))	\$6,600 if consideration ≤\$50m If consideration >\$50m, fee is lesser of: <ul style="list-style-type: none"> ■ \$13,200 x (Consideration / \$50m (rounded down to nearest whole number)); and ■ \$500,000. But if consideration is multiple of \$50m, replace 'Consideration' in formula with 'Consideration – \$1'. (New Regs, s8(1), 9(3)(f), 10, 11)

GENERAL RULES REGARDING EXEMPTION CERTIFICATES

Category	Current position	Proposed new position
Entities and businesses		
Exemption certificate for businesses or entities	\$36,900 (Current Regs, s5A(1))	75% of what the fee would be for seeking a no objection notification for the total value of acquisitions to be covered in the exemption certificate (New Regs, s30(2) item 4)
Land		
Exemption certificate for new dwellings	\$27,100 (Current Act, s6(1) item 1)	\$27,100 (New Regs, s27)
Exemption certificate for near-new dwellings	\$27,100 (Current Regs, s6A(1)) But nil if already applied for or received new dwelling exemption certificate for same development (Current Regs, 6A(2))	\$27,100 (New Regs, s28(1)) But nil if already applied for or received new dwelling exemption certificate for same development (Current Regs, 28(2))

Category	Current position	Proposed new position
Exemption certificate for established dwellings or other residential land	Same as for acquisition of residential land (Current Act, s6(1) item 3; Current Regs, s6B)	Same as for acquisition of residential land (New Regs, s29)
Exemption certificate for land generally	\$36,900 (Current Act, s6(1) item 2)	75% of the fee for seeking a no objection notification for the total value of acquisitions to be covered in the exemption certificate (New Regs, s30(2) items 1, 2, 3)
Other		
Exemption certificate for tenements and mining, production or exploration entities certificate	\$36,900 (Current Regs, s6(1))	75% of the fee for seeking a no objection notification for the total value of acquisitions to be covered in the exemption certificate (New Regs, s30(2) item 5)
Exemption certificate for notifiable national security actions	N/A	75% of the fee for seeking a no objection notification for the notifiable national security actions to be covered in the exemption certificate (New Regs, s30(2) item 6)
Exemption certificate for reviewable national security actions	N/A	75% of the fee for seeking a no objection notification for the reviewable national security actions to be covered in the exemption certificate (New Regs, s30(2) item 7)

GENERAL RULES REGARDING VARIATIONS

Category	Current position	Proposed new position
Variation of no objection notice	\$5,300 for residential land \$10,600 otherwise (Current Act, s8(2))	\$2,000 for immaterial or minor variation \$13,200 otherwise (New Regs, s25)
Variation of exemption certificate	\$5,300 for residential land (Current Act, s6(1) item 5(a)) \$10,600 for non-residential land, businesses, entities, tenements, and mining, production and exploration entities (Current Act, s6(1) item 5(c))	\$2,000 for immaterial or minor variation \$13,200 otherwise (New Regs, s35)

LOWER FEE RULES

Category	Current position	Proposed new position
One agreement covers more than one action (other than internal reorganisations which have a fixed fee)	Separate fee payable for each acquisition of interest in residential land (Current Act, s9(1)(a)) Otherwise the fee is the highest fee that would be payable for each action (Current Act, s9(1)(b))	If actions are all of same kind – fee is to be determined on basis of total consideration (New Regs, s44) If two or more actions are acquisitions of interests in Australian land not of the same kind, the fee for land-based actions is based on total value of consideration for dominant kind of Australian land (New Regs, s45, 46)
Single action covered by two or more provisions	Fee is highest amount that applies for each action under the various fee provisions (Current Act, s9(2))	Fee is highest amount that applies under the various fee provisions, but does not affect fixed fee for internal reorganisations (New Regs, s47)

Category	Current position	Proposed new position
De minimis	<p>\$2,100 for acquisition of legal or equitable interest in tenement or in mining, production or exploration entity where fee otherwise would be >25% of consideration (Current Regs, s9(1))</p> <p>\$1,000 for acquisition of interest in residential land where fee otherwise would be >25% of consideration (Current Regs, s9(2))</p> <p>Above does not apply where there is a fixed fee payable for internal reorganisation (Current Regs, 9(3))</p>	<p>If consideration <\$75,000:</p> <ul style="list-style-type: none"> ■ \$500 fee if reviewable national security action; ■ otherwise \$2,000. <p>Above does not apply where there is a fixed fee payable for internal reorganisation nor where a fee is payable to a called-in action (New Regs, s50)</p>
Majority owners	\$2,100 where acquirer already holds >50%, but does not apply where there is a fixed fee payable for an internal reorganisation (Current Regs, s10)	\$2,000 where acquirer already holds >50%, but does not apply where there is a fixed fee payable for an internal reorganisation (New Regs, s51)
Sale and leaseback of land	\$2,100, but does not apply where there is a fixed fee payable for an internal reorganisation (Current Regs, s10A)	\$2,000, but does not apply where there is a fixed fee payable for an internal reorganisation (New Regs, s52)
Acquire securities in a land entity that has more than one type of land	Fee is amount that applies for dominant land holding, unless a higher fee is payable under 'single action covered by two or more provisions' in which case the higher fee applies (Current Regs, s11)	Fee is amount that applies for dominant land holding, unless a higher fee is payable under 'single action covered by 2 or more provisions' in which case the higher fee applies (New Regs, s53)
Internal reorganisations by FGIs involving tenements	\$10,600 for FGI acquiring interest in tenement (that is not interest in Australian land) as part of internal reorganisation. But nil fee if internal reorganisation fee otherwise payable. (Current Regs, s12)	\$13,200 for FGI acquiring interest in tenement (that is not interest in Australian land) as part of internal reorganisation. But nil fee if internal reorganisation fee otherwise payable. (New Regs, s54)
Joint acquisitions as joint tenants	Nil fee payable by a joint tenant to an acquisition of residential land if another joint tenant under same acquisition agreement has already paid fee for that other joint tenant's acquisition (Current Regs, s13).	Nil payable by a joint tenant to an acquisition of interest in security, asset, trust or Australian land if another joint tenant has already paid fee for the joint tenants' acquisition (New Regs, s55(1)).
Joint acquisitions as tenants-in-common	N/A	Each tenant-in-common pays proportion of fee based on proportionate interest to be acquired in security, asset, trust or Australian land (New Regs, s55(2)).
Actions taken by wholly-owned groups	Single fee payable by a wholly-owned group where more than one of the group entities acquire interest in same agribusiness, securities in an entity, assets of an Australian business, or interests in Australian land or tenement (Current Regs, s14).	Single fee payable by a wholly-owned group where more than one of the group entities acquire interest in the same agribusiness, securities in an entity, assets of an Australian business, interests in Australian land or tenement (New Regs, s56).
Foreign business person acquiring two or more interests in residential land	If acquisitions of residential land and anything that is not residential land under the one agreement, fee is the single highest fee for those actions, but does not apply where there is a fixed fee payable for an internal reorganisation (Current Regs, s15).	No equivalent rule
Foreign business person acquiring securities in a land entity	Fee capped at \$26,700 (for consideration of ≤\$1 bn) or \$107,100 (for consideration >\$1 bn) to acquire securities in an Australian land entity which has residential land as the dominant land holding, but does not apply where there is a fixed fee payable for an internal reorganisation (Current Regs, s16).	No equivalent rule
FGI acquiring non-vacant commercial land	\$2,100 where consideration is ≤\$55m, but this does not apply where the acquisition is of interest in a land entity or where there is a fixed fee payable for an internal reorganisation (Current Regs, s17)	No equivalent rule

Category	Current position	Proposed new position
Residential land exemption certificates	N/A	Single highest fee payable for exemption certificate if person applies for residential land exemption certificate and established dwelling certificate covering same interest in residential land (New Regs, s48)
Multiple exemption certificate applications	N/A	No additional fee payable for exemption certificate application if person already applied for different type of exemption certificate within previous 14 days
Variation of no objection notification	Lowest of: <ul style="list-style-type: none"> ■ \$10,600; ■ fee originally paid, payable for no objection notification. (Current Regs, s18(1))	Lowest of: <ul style="list-style-type: none"> ■ \$10,600; ■ fee originally paid, payable for no objection notification. (New Regs, s57(1))
Variation of residential land (near-new dwelling interests) exemption certificate	Nil if already applied for or received a new dwelling exemption certificate for same development (Current Regs, 18(2))	Nil if already applied for or received new dwelling exemption certificate for same development (New Regs, 57(2))