



## FEES – BUSINESS

The *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (Fees Act) and *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* (Fees Regulation) set the fees for foreign investment applications and notices made under the *Foreign Acquisitions and Takeovers Act 1975* (Act) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Regulation).

This Guidance Note provides information on fees for foreign investment applications and notices relating to business including interests in non-residential Australian land.

### CONTENTS

Fees – Business .....	1
General Guidelines .....	2
Does a fee apply and when is it paid? .....	2
How is the fee paid? .....	2
Statutory timeframe .....	2
Fee Schedule .....	3
Fees for giving notice of notifiable actions (or proposals to take an action that is not a notifiable action).....	3
Fees where more than one action taken .....	5
Lower fee rules .....	6
Acquisitions of Land.....	10
Foreign government investors acquisition of mining, production or exploration tenements and entities .....	12
Exemption certificates .....	14
Waivers and remissions.....	16
Indexation .....	17
Penalties .....	17

## GENERAL GUIDELINES

### DOES A FEE APPLY AND WHEN IS IT PAID?

Persons are required to pay a fee for each application made, or notice given, under the Act and Regulation (limited exceptions apply).

The fees that are payable depend on the type of action and whether special fee rules apply.

### HOW IS THE FEE PAID?

Once a foreign investment application is lodged in the FIRB Application Portal , applicants will receive an application receipt. Following this, applicants will receive an application fee details email within one business day. This will include the unique Payment Reference Number (PRN) for the application and details on how to pay the fee. It is important to use the correct PRN provided to you for payment of your fee. Missing or incorrect PRN's may cause a delay to the processing of your application.

Once the fee has been paid, applicants will receive a notification which will include details of the 30 day statutory deadline. Payment options include [Government EasyPay](#), [BPay](#), [Direct Credit](#) and [transfer from an overseas bank account](#). Payment by cheque will not be accepted. When paying the fee, ensure that monies are in Australian dollars and all applicable transaction fees are accounted for, as a shortfall will delay application processing.

### STATUTORY TIMEFRAME

The statutory timeframe for making a decision will not start until the **correct** fee has been paid. Applicants should accurately describe their proposed action in their application or notice to determine the expected fee at the time of lodgement.

Understating the consideration or inaccurately describing action(s) for which the application or notice relates may result in the statutory timeframe for considering the application or notice not starting until the **correct** fee is paid.

If there has been an overpayment, the statutory timeframe will have started when the fee was paid and the overpaid amount will be remitted.

## FEE SCHEDULE

The below fees apply to all foreign persons, including foreign government investors, unless otherwise specified.

### FEES SCHEDULE FOR GIVING NOTICE OF NOTIFIABLE ACTIONS (OR PROPOSALS TO TAKE AN ACTION THAT IS NOT A NOTIFIABLE ACTION)

Fees for commercial land and entities and businesses*			
Category	Consideration for the acquisition is \$10 million or less	Consideration for the acquisition is above \$10 million and not more than \$1 billion	Consideration for the acquisition is above \$1 billion
<b>Commercial land (vacant and developed)*</b>	\$2,000	\$25,700	\$103,400
<b>Actions relating to entities and businesses which include the following actions:</b> <ul style="list-style-type: none"> <li>Acquiring an interest in securities in an entity or issuing securities in an entity</li> <li>A foreign government investor acquiring a direct interest in an Australian entity or Australian business</li> <li>Acquiring a direct interest in an Australian entity or Australian business that is an agribusiness</li> <li>Acquiring interests in assets of an Australian business or a direct interest in an Australian business that is an agribusiness</li> </ul>	\$2,000	\$25,700	\$103,400
Fees for agricultural land			
Category	Consideration for the acquisition is \$2 million or less	Consideration for the acquisition is above \$2 million and not more than \$10 million	Consideration for the acquisition is above \$10 million
<b>Agricultural land*</b>	\$2,000	\$25,700	\$103,400
Fees for internal reorganisations and starting a new business			
<b>Internal reorganisation</b>			\$10,200
<b>Foreign government investor starting an Australian business</b>			\$10,200

**FEES SCHEDULE (CONTINUED)**

<b>Fees for mining, production or exploration tenements</b>	
Acquiring an interest in a <a href="#">mining or production tenement</a> <i>(Note: a foreign person (other than a foreign government investor) acquiring an interest from an Australian government body or an entity wholly owned by an Australian government body may be exempt)</i>	\$25,700
A foreign government investor acquiring a legal or equitable interest in a <a href="#">mining, production or exploration tenement</a>	\$10,200
A foreign government investor acquiring an interest of at least 10 per cent in securities in a <a href="#">mining, production or exploration entity</a>	\$10,200
<b>Fees for other significant actions</b>	
Entering into an agreement relating to the affairs of an entity and under which one or more senior officers of the entity will be under an obligation to act in accordance with the directions, instructions or wishes of a foreign person who holds a substantial interest in the entity (or of an associate of such a foreign person)	\$10,200
Altering a constituent document of an entity as a result of which one or more senior officers of the entity will be under an obligation to act in accordance with the directions, instructions or wishes of a foreign person who holds a substantial interest in the entity (or of an associate of such a foreign person)	\$10,200
<b>Fees for variation to a no objection notification</b>	
Variation to a no objection notification if the action specified in the notification is an acquisition of an interest in residential land	\$5,100
Variation to a no objection notification if the action specified in the notification is not an acquisition of an interest in residential land	\$10,200, however, see lower fee rule below

*\* Note: The fee for land acquisitions is based on the consideration of the highest title for all actions considered part of the one agreement rather than based on the total consideration for the entire acquisition. For example, a foreign person is acquiring a \$5 million agricultural land property with over 5 titles as part of the one agreement. The highest title has an apportioned consideration of \$1.5 million. Hence the total fee for this acquisition is \$2,000.*

## FEES WHERE MORE THAN ONE ACTION TAKEN

Section 9 of the Fees Act outlines how fees are calculated where an application covers more than one action and where a single action is covered by more than one provision (e.g. an acquisition of an interest in securities in an entity and an interest in Australian land).

Where one agreement covers more than one action (other than in relation to residential land), the single highest fee relevant to those actions will apply (highest fee rule).

If multiple actions are taken in separate agreements, a separate fee will apply for each action.

Where a foreign business person (foreign person, except an individual not ordinarily resident in Australia, carrying on a business in Australia or elsewhere) is acquiring two or more interests in residential land under one agreement, the single highest fee for those actions will apply. Where one agreement covers three or more actions and one of those actions is the acquisition of an interest in residential land, the single highest fee for all actions will apply.

Where a foreign person who is not a foreign business person is acquiring two or more interests in residential land under one agreement, separate fees will be payable for each residential land acquisition. Where a foreign person who is not a foreign business person enters one agreement which covers three or more actions and one of those actions is the acquisition of an interest in residential land, a separate fee will be payable for the residential land acquisition and the single highest fee for the other (non-residential land) actions will apply.

### **Example 1**

A foreign person wants to purchase a title of vacant commercial land with a consideration of \$20 million (usual fee \$25,700), a title of non-vacant commercial land with a consideration of \$290 million (usual fee \$25,700) and a title of agricultural land that is valued at \$500,000 (usual fee \$2,000) within a single agreement as they are all being acquired from the same vendor and are part of the same contract.

The fee payable would be \$25,700, as this is the highest fee that would be payable for any of the acquisitions.

If a single action involves more than one of the following kinds of actions then the fee payable is the highest of the amounts that apply for the action:

- a significant action – entities (subsection 40(2) of the Act: this covers five actions including acquiring or issuing securities in an entity, entering an agreement relating to the affairs of an entity and altering a constituent document of an entity);
- a significant action – businesses (subsection 41(2) of the Act: this covers three actions in relation to an Australian business);
- the acquisition of an interest in Australian land;
- to take a significant action that is prescribed under the Regulations for the purposes of section 44 of the Act.

If a single action relates to land and is for more than one type of land (eg. agricultural land and vacant commercial land) the fee payable in relation to the single action is the highest of the amounts that apply.

## LOWER FEE RULES

### Relevant definition

#### Who is a foreign business person?

‘Foreign business person’ is defined in the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* which means a foreign person, except an individual not ordinarily resident in Australia, carrying on a business in Australia or elsewhere.

The Australian Taxation Office provides guidance for Australian tax purposes as to whether a person is carrying on a business. The definition of ‘foreign business person’ also incorporates businesses which are undertaken on a not-for-profit basis.

An individual could not meet this definition unless the action is taken by them when acting in another capacity such as a trustee for a trust.

This definition ensures that only foreign persons carrying on a business can benefit from the lower fee rules relating to acquisitions of residential land mentioned below.

#### **1. De minimis lower fee rule – where fee would otherwise be more than 25 per cent of consideration (only applicable for mining or production tenements and residential land) (Section 9 of the Fees Regulation)**

A lower fee of \$2,000 will apply for acquisitions of:

- (a) mining or production or exploration tenements; or
- (b) interests in mining, production or exploration entities;

where the amount otherwise payable would be more than 25 per cent of the consideration for the acquisition and the action is not covered by more than one provision.

A lower fee of \$1,000 will apply for acquisitions of interests in residential land where the fee otherwise payable would be more than 25 per cent of the consideration for the acquisition.

The De minimis lower fee rule does not apply for actions that constitute an internal reorganisation.

#### **2. Majority owners lower fee rule (Section 10 and 10A of the Fees Regulation)**

A lower fee of \$2,000 will apply where a foreign person holds an interest of more than 50 per cent in the land, entity, assets or tenement and the acquisition results in the person increasing the interest.

The conditions required to be met to obtain this lower fee treatment are specified in section 10 of the Fees Regulation and apply to all foreign persons, including foreign government investors.

The majority owners lower fee rule applies for the sale of a freehold interest in land and leaseback of that land, provided the acquisition meets all of the required conditions in section 10A of the Fees Regulation.

The majority owners lower fee rule does not apply for internal reorganisations.

**Example 2**

A foreign person holds a 60 per cent interest in securities in Australian entity, Aus Co, and is proposing to increase this interest to 80 per cent. The applicable threshold tests are met for the acquisition of an interest in securities. The majority owners lower fee rule applies to make the applicable fee \$2,000.

The majority owners lower fee rule doesn't apply where an agreement entered into gives rise to a new interest. For example, where a foreign person materially alters or varies a leasehold interest to increase the term of the lease or expand the land covered by the lease, this rule does not apply. However, if the foreign person was increasing their interest in the lease beyond 50 per cent by buying-out an interest in the lease held by their joint venture party, this rule could apply.

**3. Actions taken by wholly owned groups (Section 14 of the Fees Regulation)**

A nil fee will apply where members of the same wholly-owned group have or are to acquire, one or more other interests in the same agribusiness, securities in an entity, assets of an Australian business, interests in Australian land or tenement. The acquisitions must be dealt with in a single agreement or notice stating that the entities propose to acquire the interests and one of the members of the wholly-owned group will pay the amount of fee determined based on the consideration for the acquisition.

**Example 3**

Four entities in a wholly-owned group give notice to acquire interests in securities in non-agribusiness, Corporation A, to increase the interest held by the wholly-owned group in Corporation A from 25 to 51 per cent (the consideration for the additional 26 per cent interest is less than \$1 billion). If one of the entities in the wholly-owned group giving notice pays the fee, then the fees for the other entities are lowered to nil. Only one fee is paid although four entities have given notice to acquire an interest in securities in Corporation A.

**4. Acquisitions of non-vacant commercial land by foreign government investors (Section 17 of the Fees Regulation)**

A lower fee will apply for acquisitions of non-vacant commercial land with consideration of \$55 million or less by foreign government investors. These acquisitions will be subject to a \$2,000 fee.

If the non-vacant commercial land is being acquired through a land entity the standard fee for an interest in an Australian entity action will continue to apply (if applicable).

This lower fee rule does not apply for internal reorganisations.

**Example 4**

A foreign government investor is proposing to acquire an interest in one title of non-vacant commercial land. The consideration for the acquisition of the interest in non-vacant commercial land is \$40 million. This lower fee rule will apply to ensure that the applicable fee for this acquisition is \$2,000.

If the foreign government investor proposes to acquire land for a consideration of \$40 million, by acquiring 100 per cent interest in a land entity which only held the non-vacant commercial land the relevant fee would be (a) \$25,700 for the direct interest in an Australian entity and (b) \$2,000 for the interest in non-vacant commercial land. The highest fee rule will apply to ensure that only the fee of \$25,700 applies.

**5. Acquisition of 2 or more interests in residential land by foreign business person (Section 15 of the Fees Regulation)**

A lower fee will apply where a foreign business person (foreign person, except an individual not ordinarily resident in Australia, carrying on a business in Australia or elsewhere) acquires more than one interest in residential land under one agreement. The applicable fee is the highest fee applicable for multiple actions occurring under the one agreement.

The fee that will apply is based on the highest fee across multiple actions— that is if an application involves the acquisition of two or more interests in residential land and an interest in agricultural land then the highest fee across both land types will apply.

**Example 5**

A foreign business person proposes to acquire an interest in agricultural land and more than one interest in residential land as part of a single agreement with one vendor. The consideration of the highest title for the agricultural land action is \$2.5 million, which attracts a fee of \$25,700. The consideration of the highest title for the residential land action is \$500,000, which attracts a fee of \$5,600. The applicable fee for the agricultural land actions is \$25,700 and for the residential land actions is \$5,600.

The lower fee rule will apply to ensure that only the fee of \$25,700 applies.

**6. Acquisition of interest in securities by foreign business person in Australian land entities (Section 16 of the Fees Regulation)**

Where the consideration for the acquisition is \$1 billion or less, a lower fee of \$25,700 will apply if a foreign business person (foreign person, except an individual not ordinarily resident in Australia, carrying on a business in Australia or elsewhere) acquires an interest in an Australian land corporation with a dominant land holding in residential land; or an Australian land trust with a dominant land holding in residential land and the amount payable would otherwise be higher if the fee for acquiring an interest in residential land applied. Where the consideration is greater than \$1 billion, a lower fee of \$103,400 will apply.

Where a foreign business person is acquiring an interest in an Australian land trust with a dominant land holding in residential land and is also acquiring an interest in securities in the corporation which is the trustee of that land trust they will pay a nil fee for the acquisition of the interest in the trustee.



## 7. Fee for variation of a no objection notification (Section 18 of the Fees Regulation)

The fee for a variation to a no objection notification will be the least of the following fees:

- (a) the fee payable by the foreign person for the variation application specified in subsection 8(2) of the Fees Act (\$10,200); or
- (b) either:
  - ~ the fee payable by the foreign person (before any fee waiver or remissions under section 115 of the Act) for giving notice of a proposal to take an action that was not a notifiable action (where the person gave such notice before receiving a no objection notification); or
  - ~ the amount of the fee that was payable by the person in relation to the action specified in the no objection notification; or
- (c) the fee that would be payable by the foreign person for the notice or notification mentioned in the point (b) above in relation to the no objection notification as proposed to be varied.

### **Example 6**

A foreign government investor is seeking to vary a no objection notification in July 2018 for an acquisition of non-vacant commercial land for a consideration of \$30 million, for which they received a no objection notification in December 2017. A fee of \$25,700 was initially payable, however \$24,700 of the fee was waived under Section 115 of the Act — hence they only paid a fee of \$1,000 for the application.

The standard fee payable for the variation under subsection 8(2) of the Fees Act is \$10,200. The fee initially payable by the foreign government investor was \$25,700. The fee that would be payable if the foreign person submitted a notice to acquire the interest in non-vacant commercial land as proposed to be varied at the point the variation is requested is \$2,000.

The variation fee payable would not exceed these three fees, hence the correct fee for the variation is \$2,000.

## ACQUISITIONS OF LAND

Section 7 of the Fees Act outlines fees for acquisitions of interests in Australian land. Fees are payable for all notices to acquire an interest in Australian land. This includes acquiring interests in land entities.

There are different fees for acquisitions of interests in residential, agricultural and commercial land, and mining and production tenements. The applicable fees are contained in the Fee Schedule table above. This guidance note covers fees in relation to non-residential land acquisitions. Further information on residential land fees is in Guidance Note 29.

### Acquisition of multiple titles

Acquisitions of interests in multiple titles of land, other than residential land, from the same vendor in the same agreement will be charged a single fee. The fee will be based on the interest in the title of land with the highest consideration.

Where the agreement includes an overall purchase price for the land, the consideration should be apportioned amongst the titles on a reasonable basis. This information should be included when giving the notice, so the correct fee can be calculated.

#### *Example 7*

A foreign person wants to acquire two blocks of commercial land neighbouring each other, in the same agreement from the same vendor. The consideration for the office building is \$15 million and the consideration for the multi-storey commercial car park is \$5 million. Rather than paying a \$25,700 fee for acquiring the interest in the office building and a \$2,000 fee for acquiring the interest in the multi-story commercial car park, the foreign person will incur a single fee of \$25,700.

#### *Example 8*

A foreign person frequently invests in commercial land in Australia. The foreign person wants to buy a shopping centre that is for sale in Sydney for a consideration of \$20 million, and vacant commercial land for a 600 apartment development in Melbourne for a consideration of \$12 million. The agreements and vendors of the properties are different. The foreign person gives two notices on the same day and pays total fees of \$51,400 (\$25,700 for each parcel of land).

### Acquisition of land entities

The fee for acquiring interests in securities in an entity is contained in the Fee Schedule table above. However, section 12 of the Act provides that acquiring an interest in securities in an Australian land corporation or Australian land trust, or an interest in an agricultural land corporation or agricultural land trust, also means acquiring an interest in Australian land.

This means that for an action for which a notice is given that is both acquiring securities in an entity and acquiring securities in a land entity, and neither acquisition is otherwise exempt or outside the scope of the Act, the fee will be calculated based on the highest fee applicable (special rules apply if the interest in the land entity is an interest in residential land).

**Example 9**

A foreign person proposes to acquire a 25 per cent interest in units in an Australian land entity for \$400 million. The Australian land entity only holds interests in commercial land that is not vacant.

The acquisition constitutes the following actions:

- an acquisition of a substantial interest in an Australian entity which has a consideration of \$400 million (\$25,700 fee); and
- an acquisition of an interest in commercial land that is not vacant which has a consideration of \$400 million (\$25,700 fee).

Rather than paying separate fees for both kinds of actions, the fee will be calculated based on the higher fee that is payable for the actions. Given the actions incur the same fee; a single fee of \$25,700 is applicable.

**Land entities which hold more than one type of Australian land**

Under section 11 of the Fees Regulation, for land entities that hold more than one type of land, the fee for the acquisition of the interest in securities in a land entity will be based on the entity's dominant land holding.

To determine the entity's dominant land holding, a reasonable assessment of the value of interests in land held by the entity in agricultural land that is used wholly and exclusively for a primary production business, commercial land, residential land and mining or production tenements should be made.

If the value of the land is greatest for a type of land, the kind of land whose value is assessed as being the greatest will be the entity's dominant land holding. The fee will be based on the dominant land holding.

This special rule applies only for working out a fee where an entity holds more than one kind of land. This special rule does not apply if a fee is payable under section 9(2)(a) of the Fees Act (actions of more than one kind) and the fee is higher than the fee worked out under this special rule.

**Example 10**

A foreign person proposes to acquire an interest in securities in an Australian land entity for a consideration of \$20 million. The action does not constitute a substantial interest in an Australian entity.

The Australian land entity holds 75 per cent of its interests in Australian land (thus making it an Australian land trust). Of the interests in Australian land:

- 70 per cent of the interests are in commercial land; and
- 30 per cent of the interests are in residential land.

As the land entity holds more than one type of Australian land, the foreign person must make a reasonable assessment of the entity's dominant land holding.

As the dominant land holding is in commercial land, the foreign person must make a reasonable assessment of the interest held by the entity in commercial land that is vacant and commercial land that is not vacant. Of the interests in commercial land:

- 60 per cent of the interests are in vacant commercial land; and
- 40 per cent of the interests are in non-vacant commercial land.

The dominant land holding is in commercial land that is vacant.

The fee is calculated based on the interest in vacant commercial land. The fee for the acquisition is \$25,700.

## **FOREIGN GOVERNMENT INVESTORS ACQUISITION OF MINING, PRODUCTION OR EXPLORATION TENEMENTS AND ENTITIES**

Section 7 of the Fees Regulation outlines fees for foreign government investors related to mining, production or exploration tenements and mining, production or exploration entities. The applicable fees are contained in the Fee Schedule table above.

If the applicable fee would otherwise be more than 25 per cent of the consideration, the foreign person will incur a fee of \$2,000 due to section 9 of the Fees Regulation.

- The fee is determined based on the consideration for the interest in the tenement, not the value of any separate freehold or leasehold interests of land within the area of the tenement.
- Where the acquisition is being undertaken by applying to an Australian government body or an entity wholly owned by an Australian government body for the issue or grant of the tenement, consideration will be based on the sum of all monies to be paid for the issue or grant, including any fees and charges. It does not include minimum spend requirements that may be included as conditions attaching to the tenement.

Where there are multiple notifiable actions under one agreement, the action with the highest fee is payable.

**Example 11**

A foreign government investor wants to purchase a mining tenement from a private company for consideration of \$60 million. In this case, there are two notifiable actions:

- the acquisition of an interest in a mining tenement (\$25,700 fee); and
- the acquisition of a legal interest in a mining tenement by a foreign government investor (\$10,200 fee).

The applicable fee is not more than 25 per cent of the consideration. The foreign government investor submits a notice and pays \$25,700, as this is the highest fee payable for the two actions.

**Internal reorganisations by foreign government investors involving tenements**

Under section 12 of the Fees Regulation, a \$10,200 fee is payable if a foreign government investor acquires a legal or equitable interest in a tenement that is not an interest in Australian land from another entity and any of the following applies:

- both entities are subsidiaries of the same holding entity;
- the other entity is the holding entity of the first entity;
- the other entity is a subsidiary of the first entity.

However, the fee payable by the foreign government investor is nil if another fee is payable by the foreign government investor or an entity of the same wholly-owned group in relation to an internal reorganisation under section 10 of the Act, and the acquisition of tenements that are not an interest in Australian land forms part of the same internal reorganisation. For further information on internal reorganisations, see Guidance Note 27.

## EXEMPTION CERTIFICATES

Section 6 of the Fees Act and section 6 of the Fees Regulation outlines fees that are payable in relation to exemption certificates.

Fees for exemption certificates	
<b>Exemption Certificate (land, businesses and entities, tenements and mining, production and exploration entities)</b>	\$35,600
<b>Variation of the above exemption certificates</b>	\$10,200

### **New or near-new) dwelling exemption certificate**

Persons such as property developers can apply for an exemption certificate under section 57 of the Act to sell new (or near-new) dwellings in a development to foreign persons, without each foreign person purchaser being required to seek their own approval. For more information, see Guidance Note 8.

The initial application fee for this exemption certificate is \$26,100, plus there is an additional fee payable in respect of each new (or near-new) dwelling acquired by foreign persons. The fee for a near-new dwelling exemption certificate is nil if the person (such as a property developer) had applied for, or been given a new dwelling exemption certificate, provided both exemption certificates cover (or will cover) interests in relation to the same development.

The additional fee that is payable for each dwelling acquired by foreign persons is the amount that would have been payable if the foreign persons sought approval individually as set out in the Fee Schedule above. This fee is payable by the developer on a six monthly basis, based on the number of acquisitions made under the exemption certificate over the previous six months. This is referred to as the reconciliation period.

This is referred to as the reconciliation period. For more information on residential land fees, see Guidance Note 29.

#### **Example 12**

A developer wants to obtain an exemption certificate to sell new dwellings in its development to foreign persons. The developer applies for the exemption certificate and pays the initial fee of \$26,100. After the developer is granted an exemption certificate, foreign persons acquire four new dwellings under the certificate in the following six months. Three new dwellings are each purchased for \$600,000 and one new dwelling is purchased for \$1.2 million.

For the reconciliation period, the developer pays an additional fee of \$5,600 for each new dwelling acquired by a foreign person valued at \$1 million or less and pays an additional fee of \$11,300 for the new dwelling acquired for \$1.2 million. The total additional fee payable is \$28,100.

### **Exemption certificate for a program of acquisitions of land**

Foreign persons can apply for an exemption certificate under section 58 of the Act for a program of acquisitions of interests in one or more kinds of Australian land (residential, agricultural, commercial and mining or production tenements). For more information, see Guidance Note 21. The application fee for this exemption certificate is \$35,600.

If an application for an exemption certificate for a program of land acquisitions was not granted by the Treasurer, fees to the value of the original application will be waived for any subsequent applications for an interest in land. If the entity that paid the fee is a holding entity or subsidiary, the fee may be credited towards separate notices of other entities within the same group, with the written consent of an authorised officer of the entity that initially applied for the certificate that was not given.

**Example 13**

A foreign person applied for an exemption certificate for a program of acquisitions of land and paid the \$35,600 fee. The Treasurer was not satisfied that giving the certificate would not be contrary to the national interest and so declined to give the certificate.

The foreign person later gave notice to acquire an interest in commercial land for a consideration of \$20 million. Taking into account the fee already paid for the exemption certificate application which was not successful, the Treasurer exercised his power to waive the full \$25,700 fee that would have otherwise applied to the notice.

**Exemption certificate for businesses and entities**

Foreign persons can apply for an exemption certificate under section 42 of the Regulation where the foreign person proposes to acquire an interest in securities in an entity or businesses. For more information, see Guidance Note 26.

The application fee for this exemption certificate is \$35,600. However, no fee will apply if another fee is paid for an application for an exemption certificate under section 58 of the Act (exemption certificate for a program of acquisitions of land) by the person and the applications were made within 14 days of each other.

If an application for an exemption certificate for a program of businesses or entities acquisitions was not granted by the Treasurer, fees to the value of the original application will be waived for any subsequent applications for an interest in securities in an entity or business. If the entity that paid the fee is a holding entity or subsidiary, the fee may be credited towards separate notices of other entities within the same group, with the written consent of an authorised officer of the entity that initially applied for the certificate that was not given.

**Applications made for businesses and entities certificates and land exemption certificates**

Where an application has been made for both an exemption certificate for land and a businesses and entities exemption certificate only one fee will be payable. The fee for the second certificate applied for will be nil provided the applicant pays the fee for the first exemption certificate and submits an application for the second exemption certificate within 14 days.

**Example 14**

Beta Co is a foreign person who makes an application for a land exemption certificate (under section 58 of the Act). Beta Co then pays the applicable fee for this exemption certificate (**first exemption certificate**) which is \$35,600.

If Beta Co submits an application for a businesses and entities exemption certificate (**second exemption certificate**), the second exemption certificate within 14 days of paying the applicable fee for the first certificate, then the fee for the second certificate will be nil.

**Exemption certificate for certain interests in tenements and mining, production or exploration entities**

Foreign persons can apply for an exemption certificate under section 43 of the Regulation to acquire one or more kinds of interests in a tenement, or one or more kinds of interests in securities in a mining, production or exploration entity if those interests are not interests in Australian land.

The application fee for this exemption certificate is \$35,600. However, no fee will apply if another fee is payable in relation to an application for an exemption certificate under section 58 of the Act (exemption certificate for a program of acquisitions of land) by the person or an entity that is a member of the same wholly-owned group and the applications under section 43 and 58 were made within 7 days of each other.

**WAIVERS AND REMISSIONS**

Under section 115 of the Act the Treasurer may waive or remit the whole or a part of a fee that is payable, if they are satisfied that it is not contrary to the national interest to waive or remit the fee. All applications for fee waivers or remissions will be considered on a case-by-case basis.

Generally, **fees will not be waived or remitted based on the outcome of an application or notice**. Fees will not generally be remitted where a proposal does not get approval from the Treasurer, the applicant changes their mind or the investment has been unsuccessful. For example, a foreign person will not generally receive a fee waiver or remission following an unsuccessful competitive bid process. Similarly, fees for exemption certificates are not likely to be remitted if ultimately no acquisitions are made by foreign persons under the exemption certificate.

**Fees will not generally be remitted where an application has been withdrawn.** However, for applications or notices that are resubmitted and are substantially the same or similar action, the fee for the latter application or notice may be waived. This will be considered on a case-by-case basis, taking into account the extent that the latter application or notice is similar to the withdrawn application or notice.

There are only limited circumstances where a fee waiver or remission is likely to be granted. These include:

- **Acquisitions by unincorporated consortiums.** A partial fee waiver will generally be considered for unincorporated consortiums where there are multiple foreign persons providing notices for one acquisition for which separate fees would be payable (compared



with if the consortium was an incorporated joint venture for which one notice and fee would be applicable).

- **Applications for exemption certificates for a program of land acquisitions and/or businesses and entities acquisitions that were not granted.** If an application for an exemption certificate for a program of land acquisitions and/or businesses and entities acquisitions was not granted by the Treasurer, fees to the value of the original application may be waived for any subsequent applications for an interest in land. If the entity that paid the fee is a holding entity or subsidiary, the fee may be credited towards separate notices of other entities within the same group, with the written consent of an authorised officer of the entity that initially applied for the certificate that was not given.
- **Exempt actions.** If an action is exempt and is notified, there are some circumstances where a fee may be remitted (this does not apply to voluntary notices). Applicants should ensure that they assess whether an application or notice is required before making an application or giving a notice.

If a person wants to apply for a fee waiver or remission, they should clearly set out the circumstances in their application and outline why the Treasurer should consider waiving or remitting the fee. Decisions on fee waivers and remissions are not subject to review under the *Administrative Decisions (Judicial Review) Act 1977* or the *Administrative Appeals Tribunal Act 1975* but can be subject to common law judicial review.

## INDEXATION

Section 12 of the Fees Act explains how the fees are worked out in financial years following the financial year in which the fee amount was legislated. Where this results in an increase in certain fees for a financial year, the new fees will apply to applications made and notices given as of 1 July of that financial year.

## PENALTIES

Strict penalties (including civil and criminal penalties) may apply for breaches of Australia's foreign investment rules.

## FURTHER INFORMATION

Further information is available on the FIRB website at [www.firb.gov.au](http://www.firb.gov.au) or by contacting +61 2 6263 3795.

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**Important notice:** This Guidance Note provides a summary of the relevant law. As this Note tries to avoid legal language wherever possible it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on it. Your particular circumstances must be taken into account when determining how the law applies to you. This Guidance Note is therefore not a substitute for obtaining your own legal advice.