



MONETARY SCREENING THRESHOLDS

One of the tests in determining whether an action is a significant action under the *Foreign Acquisitions and Takeovers Act 1975* is whether the monetary screening threshold test is met. Some significant actions (called notifiable actions) must be notified to the Treasurer before the actions can be taken. This guidance note outlines the monetary screening thresholds.

For further information on significant and notifiable actions, see Guidance Note 35.

Monetary screening thresholds are met when either the amount paid for an interest or the value of an entity or assets exceeds the threshold amount, depending on the type of action. The exception is for agricultural land, where the test is cumulative.

Monetary screening thresholds are indexed annually on 1 January except for the \$15 million agricultural land threshold and the \$50 million land threshold for Thailand investors, which are not indexed.

FREE TRADE AGREEMENT COUNTRY INVESTORS

Australia currently has ten free trade agreements (FTAs) in force with: the 10 ASEAN members, Chile, China, Japan, Korea, Malaysia, New Zealand, Singapore, Thailand and the United States. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) also came into force for Australia on 30 December 2018.

Under these agreements Australia has made various commitments relating to foreign investment screening. These commitments determine what monetary screening thresholds apply to investors from certain countries.

Under the foreign investment framework, only 'agreement country' investors that are either a 'national' or an 'enterprise' of an agreement country are able to access the higher FTA thresholds.¹ An 'enterprise' is generally an entity (or a branch of an entity) that is constituted or organised under the law of the country and that is carrying on business activities there.

¹ Applies to countries that meet the specific definitions set out in the *Foreign Acquisitions and Takeovers Regulation 2015* (see section 7 (meaning of enterprise of a country) and section 8 (meaning of national of a country)).

NON-LAND PROPOSALS

The monetary screening thresholds for acquisitions of interests in securities in an entity or issuing securities in an entity is based on the total asset value or total issued securities value for the entity (whichever is higher). The monetary screening threshold for acquisitions of interests in the assets of an Australian business is based on the total consideration for the acquisition.

The monetary screening thresholds for agribusinesses are based on the consideration for the acquisition. This includes the total value of other interests held by the foreign person (with associates) in the entity.

Non-land proposals

Investor	Action	Threshold — more than:
From FTA partner countries that have the higher threshold²	Acquisitions in non-sensitive businesses	\$1,154 million
	Acquisitions in sensitive businesses ³	\$266 million
	Media sector ⁴	\$0
	Agribusinesses	For Chile, New Zealand and United States, \$1,154 million. For Canada, China, Japan, Korea, Mexico and Singapore \$58 million (based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (with associates) in the entity)
Other investors	Business acquisitions (all sectors)	\$266 million
	Media sector	\$0
	Agribusinesses	\$58 million (based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (with associates) in the entity)
Foreign government investors	All direct interests in an Australian entity or Australian business	\$0
	Starting a new Australian business	\$0

2 Agreement country investors are Canadian, Chilean, Chinese, Japanese, Mexican, New Zealand, Singaporean, South Korean and United States investors, except foreign government investors, and any country for which TPP-11 subsequently comes into force. TPP-11 will come into force for Vietnam on 14 January 2019.

3 Sensitive businesses include media; telecommunications; transport; defence and military related industries and activities; encryption and securities technologies and communications systems; and the extraction of uranium or plutonium; or the operation of nuclear facilities.

4 For investments in the media sector, a holding of at least five per cent requires notification and prior approval regardless of the value of investment.

LAND PROPOSALS

The monetary screening thresholds for acquisitions of Australian land (except agricultural land) are based on the value of the proposed investment, not the total value of the land itself.

The \$15 million screening threshold for acquisitions of agricultural land is based on the cumulative interests in agricultural land held by the foreign person (with associates). It is met if an acquisition would mean that the value of all the interests held in agricultural land exceeds the threshold amount.

Land proposals

Investor	Action	Threshold — more than:
All investors	Residential land (except aged care facilities, retirement villages and certain types of student accommodation (see Guidance Note 15))	\$0
Privately owned investors from FTA partner countries that have the higher threshold⁵	Agricultural land	For Chile, New Zealand and United States, \$1,154 million
		For Canada, China, Japan, Korea, Mexico and Singapore \$15 million (cumulative)
	Vacant commercial land	\$0
	Developed commercial land	\$1,154 million
	Mining and production tenements	For Chile, New Zealand and United States, \$1,154 million
	Others, \$0	
Privately owned investors from non-FTA countries and FTA countries that do not have the higher threshold	Agricultural land	For Thailand, where land is used wholly and exclusively for a primary production business \$50 million (otherwise the land is not agricultural land)
		Others \$15 million (cumulative)
	Vacant commercial land	\$0
	Developed commercial land	\$266 million
		Low threshold land ⁶ , \$58 million
	Mining and production tenements	\$0
Foreign government investors	Any interest in land	\$0

5 Agreement country investors are Canadian, Chilean, Chinese, Japanese, Mexican, New Zealand, Singaporean, South Korean and United States investors, except foreign government investors, and any country for which TPP-11 subsequently comes into force. TPP-11 will come into force for Vietnam on 14 January 2019.

6 Low threshold land includes mines and critical infrastructure (for example, an airport or port).

FURTHER INFORMATION

Further information is available on the FIRB website at www.firb.gov.au or by contacting +61 2 6263 3795.

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.
