

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

*Foreign Acquisitions and Takeovers Fees Imposition Act 2015*

*Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020*

The Fee Regulations form part of a broader foreign investment legislation reform package, as announced by the Government on 5 June 2020 to strengthen the foreign investment framework. The amendments establish a fairer and simpler framework for foreign investment fees.

The *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (the Act) establishes a framework to impose, as taxes, fees for the review foreign investment applications.

The purpose of the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020* (the Fee Regulations) is to set out the fees payable for particular actions or notices given or issued under the *Foreign Acquisitions and Takeovers Act 1975* (the FATA). The Fee Regulations also repeals the existing *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015*.

Section 13 of the Act provides that the Governor-General may make regulations prescribing matters. These can be any matters required or permitted by the Act to be prescribed or any matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides that fees are payable under Part 6 and Part 6A of the FATA. The *Foreign Acquisitions and Takeovers Fees Imposition Amendment Act 2020* amended the Act from 1 January 2021 to support the new fee framework and provide that all fee amounts will be set in regulations.

The Fee Regulations set the method for determining the fees payable when a person:

gives notice of a notifiable action or a notifiable national security action;

gives a notice of a proposal to take either a significant action that is not a notifiable action or notifiable national security action or to take a reviewable national security action;

receives a notice that an action that is a reviewable national security action or a significant action that has not been notified may pose a national security concern;

applies for a variation of a no objection notification or notice imposing conditions;

applies for an exemption certificate;

applies for a variation of an exemption certificate;

retrospectively notifies the Treasurer of a significant action or a notifiable national security action;

has been given an order or has been provided a no objection notification without giving the Treasurer a notice relating to the action specified in the order or notification; and

is liable for a vacancy fee for acquisitions of residential land.

The Act does not specify any conditions that need to be met before the power to make the Fee Regulations may be exercised.

Details of the Fee Regulations are set out in [Attachment A](#).

The Fee Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation on the Fee Regulations was undertaken from 18 September 2020 to 2 October 2020. In addition to the submissions that were received, Treasury engaged directly with a number of stakeholders. In response to the consultation the method for determining the fee amounts has been refined and further clarified.

The Fee Regulations apply to fees that become payable on or after 1 January 2021. The Fee Regulations commenced the later of: the day after the instrument is registered; and the day the *Foreign Acquisitions and Takeovers Fees Imposition Amendment Act 2020* commenced (1 January 2021).

A statement of Compatibility with Human Rights is at [Attachment B](#).

**Details of the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020***

**Section 1 – Name of the Fee Regulations**

This section provides that the name of the Fee Regulations is the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020* (the Fee Regulations).

**Section 2 – Commencement**

This section provides that Schedule 1 to the Fee Regulations commences the later of: the day after the instrument is registered on the Federal Register of Legislation; and the day the *Foreign Acquisitions and Takeovers Fees Imposition Amendment Act 2020* commences.

**Section 3 – Authority**

This section provides that the Fee Regulations are made under the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (the Act).

**Section 4 – Schedules**

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

**Section 5 – Definitions**

This section sets out the meaning of some of the key words or terms used in the Fee Regulations. Expressions used in the Fee Regulations that are not defined in subsection 5(1) but are defined in the *Foreign Acquisitions and Takeovers Act 1975* (the FATA) or the *Foreign Acquisitions and Takeovers Regulations 2015* (the FATR) have the same meaning in the FATA and FATR. For example ‘consideration’, ‘land entity’, ‘mining and production or exploration entity’ and ‘tenements’ are all terms defined in the *Foreign Acquisitions and Takeovers Regulation 2015* and have the same meaning in the Fee Regulations.

The Fee Regulations define the following terms:

‘Action group’ has the meaning given by section 49. The term ‘action group’ is used to determine the appropriate fee treatment where one agreement covers more than one action.

‘Amount’ could include a nil amount.

‘Applicable actions’ has the meaning given by section 48. The term ‘applicable action’ is used to determine the appropriate fee treatment where one agreement covers more than one action.

- ‘Dominant land holding’ has the meaning given by subsection 56(2) of the Fee Regulations. The term ‘dominant land holding’ is used to determine the appropriate fee treatment for an acquisition of a land entity that holds interests in different types of Australian land.
- ‘Fee constant’ has the meaning given by section 9. The ‘fee constant’ applicable to certain types of actions is a value compared against the consideration, for the purposes of working out the applicable fee. For example the fee constant for acquiring an interest in agricultural land is \$2 million.
- ‘Index number’ has the meaning given by section 61. The ‘index number’ is published by the Australian Statistician.
- ‘Indexation factor’ has the meaning given by section 60. The term ‘indexation factor’ is used to determine the indexation for fees.
- ‘Internal reorganisation’ has the meaning given by subsection 41(2). The term ‘internal reorganisation’ is used to determine a different fee where an action meets that definition.
- ‘Kind of relevant land’ means each of the following: residential land, agricultural land; commercial land, mining or production tenement, or an exploration tenement;
- ‘Quarter’ means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.
- ‘Relevant acquisition’ has the meaning given by subsection 41(2). The term ‘relevant acquisition’ is used to determine whether a vacancy fee is payable.
- ‘Wholly-owned group’ has the same meaning as in the *Income Tax Assessment Act 1997*, which provides that two companies are in the same wholly-owned group if one of the company is a subsidiary of the other company, or if each of the companies is a subsidiary of the same third company.

## **Part 2 - Fees relating to actions**

### **Division 1 – Fees covered by this Part**

#### **Section 6 – Fees covered by this Part**

This section provides the method for determining the fee amount for those fees imposed by section 5 of the Act which states fees are payable under Part 6 of the FATA. It also provides that a vacancy fee is payable under Part 6A of the FATA for foreign acquisitions of residential land.

### **Division 2 - Fees for giving notice of a notifiable action or national security action**

#### **Subdivision A – Fees covered by this Division**

##### **Section 7 – Fees covered by this Division**

This section explains that Division 2 of Part 2 of the Fee Regulations sets out how to determine the amount payable when a person gives notice of a notifiable action or a notifiable national security action under section 81 of the FATA.

#### **Subdivision B - Fees for giving notice of notifiable actions**

##### **Section 8 – Fees for giving notice of a notifiable action – general rule**

This section provides how to determine the fees payable for giving notice of a notifiable action. As a general rule, the fee for giving a notice under section 81 of the FATA is worked out using the ‘fee constant’ number in section 9 and applying the fee in the formula set out in sections 10 and 11 of the Fee Regulations.

##### **Section 9 – Finding the fee constant**

This section provides the fee constant. The fee constant is a specified value that differs depending on the kind of notifiable action. Items 1, 2 and 3 of the table in section 9 provides for the following fee constant:

acquiring an interest in residential land - \$1 million;

acquiring an interest in agriculture land - \$2 million;

acquiring an interest in commercial land, interest in a mining or production tenement;  
acquiring an interest in certain entities or agribusinesses; a foreign person  
acquiring an interest in an Australian media business; a foreign government  
investor acquiring a direct interest in an Australian entity or business; a foreign  
government investor acquiring certain mining interests - \$50 million.

##### **Section 10 – Applying the fee constant to work out the amount of the fee**

The amount of fee payable is worked out by comparing the fee constant to the consideration of the acquisition. The method for determining the fee payable depends on whether the consideration for the action is less than or more than the fee constant.

If the consideration is less than or equal to the fee constant, the fee applicable is \$6,350. The outcome for specific acquisition types is set out in the following table.

<i>If the consideration is less than or equal to:</i>	<i>The fee is ...</i>
<b>\$1 million for residential land</b>	\$6,350
<b>\$2 million for agricultural land</b>	\$6,350
<b>\$50 million for commercial land, tenements, businesses and entities.</b>	\$6,350

For actions with a consideration greater than the relevant fee constant, the method for determining the fee payable depends on whether the consideration is a multiple of the fee constant or not.

*If the consideration is a multiple of the fee constant*

If the consideration is more than the fee constant and a multiple of the fee constant then the applicable fee is increased by the fee component (\$12,700) for every multiple of the fee constant. The fee is no greater than \$500,000.

For example, if the fee constant is \$2 million, the multiples are 2, 4, 6, 8, 10 million etc. and the fee is worked out as the product of \$12,700 multiplied by the amount calculated under subsection 11(1) of the Fee Regulations.

Applying the method in subsection 11(1) of the Fee Regulations instead of subsection 11(2) of the Fee Regulations for acquisitions with a consideration exactly equal to a multiple of the relevant fee constant would result in a lower fee than applying the amount in subsection 11(2).

*If the consideration is not a multiple of the fee constant*

If the consideration for the action is more than the fee constant and is not a multiple of the fee amount, then the fee is worked out by multiplying \$12,700 by the amount worked out under subsection 11(2) of the Fee Regulations. The fee will be no greater than \$500,000.

The \$6,350 figure, the \$12,700 fee component and the \$500,000 upper bound are all subject to indexation.

Section 11 – Components for working out the fee if the consideration is more than the fee constant

The method for determining the amount of the fee under section 10 relies on the calculation of an amount under section 11.

If the consideration is more than the fee constant but is a multiple of the fee constant, the formula at subsection 11(1) of the Fee Regulations calculates the amount to use in section 10 as:

- the amount of consideration for the action minus \$1 divided by the fee constant, rounded down to the nearest whole number.

If the consideration is more than the fee constant and not a multiple of the fee constant, the formula at subsection 11(2) of the Fee Regulations calculates the amount to use in section 10 as:

- the value of consideration for the action divided by the fee constant rounded down to the nearest whole number.

Together, sections 10 and 11 provide for the following formulas.

***The fee payable for an acquisition of residential land is determined below:***

- For an acquisition with a consideration of \$1 million or less: \$6,350
- For an acquisition of more than \$1 million, worked out as follows:
  - Step 1. Apply the following formula:
    - 1.1. If the consideration for the acquisition is a multiple of \$1 million,
      - 1.2.  $(\text{Consideration of the acquisition} - 1) / 1 \text{ million}$ , rounding down to the nearest whole number
    - 1.3. Otherwise,
      - 1.4.  $(\text{Consideration for the acquisition}) / 1 \text{ million}$ , rounding down to the nearest whole number;
  - Step 2. Multiply the step 1 amount by \$12,700
  - Step 3. The step 2 amount is the amount of the fee capped at \$500,000.

***The fee payable for an acquisition of agricultural land***

- For an acquisition with a consideration of \$2 million or less: \$6,350
- For an acquisition of more than \$2 million, worked out as follows:
  - Step 1. Apply the following formula:
    - 1.1. If the consideration for the acquisition is a multiple of \$2 million,
      - 1.2.  $(\text{Consideration of the acquisition} - 1) / 2 \text{ million}$ , rounding down to the nearest whole number
    - 1.3. Otherwise,
      - 1.4.  $(\text{Consideration for the acquisition}) / 2 \text{ million}$ , rounding down to the nearest whole number;
  - Step 2. Multiply the step 1 amount by \$12,700
  - Step 3. The step 2 amount is the amount of the fee capped at \$500,000.

***The fee payable for an acquisition of commercial land, interest in a tenement, business or entity are determined below:***

- For an acquisition with a consideration of \$50 million or less: \$6,350
- For an acquisition of more than \$50 million, worked out as follows:
  - Step 1. Apply the following formula:
    - 1.1. If the consideration for the acquisition is a multiple of \$50 million,
      - 1.2. (Consideration of the acquisition – 1)/50 million, rounding down to the nearest whole number
    - 1.3. Otherwise,
      - 1.4. (Consideration for the acquisition)/50 million, rounding down to the nearest whole number;
  - Step 2. Multiply the step 1 amount by \$12,700
  - Step 3. The step 2 amount is the amount of the fee capped at \$500,000.

### Section 12 – Exception – fee for giving a notice of a foreign government investor starting an Australian business

For foreign government investors, the applicable fee for giving a notice under section 81 of the FATA of a notifiable action to start an Australian business (paragraph 56(1)(b) of the FATR) is \$2,000 (indexed).

### Subdivision C - Fees for giving a notice of notifiable national security actions

#### Section 13 – Notifiable national security actions

This section provides that the fee applicable for giving a notice under section 81 of the FATA of a notifiable national security action is equal to the fee that would have been worked out if the action were a notifiable action. The fee for a notifiable national security action is the fee payable for the equivalent notifiable action.

#### **Example 1**

A foreign person proposes to acquire a direct interest in a national security business, which is a notifiable national security action. The consideration for this acquisition is \$210 million.

The fee payable is \$50,800, as this is the fee that would be payable for a business acquisition with a consideration value of \$210 million.

#### **Example 2**

A foreign person proposes to start a national security business, which is a notifiable national security action. The applicable fee for starting a national security business is \$2,000, which is equivalent to the fee amount for a foreign government investor starting an Australian business.

### **Division 3 - Fees for giving notice of a proposal to take an action that is neither a notifiable action nor a notifiable national security action**

#### Section 14 – Fees covered by this Division

This section explains that Division 3 of Part 2 of the Fee Regulations sets out how to determine the amount payable when a person gives notice of a proposal to take a significant action (that is not a notifiable action or notifiable national security action) or a proposal to take a reviewable national security action.

#### Section 15 – Proposal to acquire certain interests in entities or businesses, or issuing securities in entities etc.

This section provides that the fee payable for giving notice of a proposal to take a significant action, which is not a notifiable action or notifiable national security action, is the fee payable as worked out under Division 2 of Part 2 of the Fee Regulations as if the action were covered by that Division.

The actions that are subject to this rule are significant actions to:

acquire a direct interest in an Australian entity or business that is an agribusiness;

acquire interest in securities in an entity;

issue securities in an entity; and

acquire interests in assets of an Australian business.

#### Section 16 - Proposal to enter or terminate agreements, or to alter constituent documents

This section provides that a flat fee is payable for giving a notice of a proposal to:

enter an agreement relating to the affairs of the entity (under paragraph 40(2)(d) of the FATA);

alter a constituent document (under paragraph 40(2)(e) of the FATA); or

enter or terminate a significant agreement with an Australian business (under paragraph 41(2)(c) of the FATA).

The actions cannot be notifiable actions or notifiable national security actions. The fee is \$12,700 (indexed).

#### Section 17 – Proposal to take a reviewable national security action

This section provides the amount of the fee payable where a person gives the Treasurer a notice of a proposal to take a reviewable national security action.

The amount of the fee payable is 25 per cent of the fee that would have been worked out for an equivalent notifiable action or significant action. Where there is not a directly equivalent action, the Fee Regulations would indicate how to treat the action.

### **Example 3**

A foreign investor has recently acquired a direct interest in an entity whose core business is manufacturing textiles for the fashion industry and researching and developing experimental textiles. This action did not require mandatory foreign investment approval as it was not a significant or notifiable action, nor was it a notifiable a national security action. The consideration for this acquisition was \$10 million.

Upon acquiring the company, the foreign investor recognises the potential to sell one of the experimental textiles for use in a national security context. The foreign investor decides to voluntarily notify in order to remove the possibility that this investment is called in at a later date.

The fee payable for voluntarily notifying of a reviewable national security action is \$1,587.50, as this is 25 per cent of the fee that would be payable for a business acquisition with a consideration value of \$10 million.

### **Division 4 - Fees for notices of national security reviews**

#### **Section 18 – Fees covered by this Division**

A fee is payable when a person is given a notice under subsection 66A(4) of the FATA. This notice is given by the Treasurer to ‘call-in’ an action which has been taken or is proposed to be taken and the action may pose a national security concern.

This section explains that Division 4 of Part 2 of the Fee Regulations sets out how to determine the fee payable when an action is ‘called-in’ by the Treasurer.

#### **Section 19 – Notices of national security reviews**

This section provides the amount of a fee worked out for an action that has been called in. The amount is equal to 25 per cent of the fee that would have otherwise been worked out under the Fee Regulations if the person had voluntarily notified of the reviewable national security action or the significant action.

### **Example 4**

The Treasurer becomes aware through Treasury’s monitoring capability that a foreign person is proposing to acquire a private company that provides after-hours maintenance services to state and territory government offices. The target company is estimated to be worth around \$90 million.

While this investment is not a significant or notifiable action, it meets the criteria of being a reviewable national security action.

The Treasurer decides to ‘call-in’ the action because the Treasurer considers the action may pose a national security concern.

The fee payable is \$3,175, as this is 25 per cent of the fee that would be payable for a business acquisition with a consideration value of \$90 million.

### **Division 5 - Fees for certain actions for which notice is not given**

#### Section 20 – Simplified outline of this Division

Fees are payable if the Treasurer makes an order or issues a no objection notification about an acquisition and the person did not notify before taking the action and the action was not ‘called-in’ by the Treasurer.

This section provides the simplified outline for Division 5 of Part 2 of the Fee Regulations. That is, that Division 5 provides the fee amounts that are payable in accordance with item 5 of the table in subsection 113(1) of the FATA.

#### Section 21 – Significant actions – acquiring certain interests in entities or businesses, or issuing securities in entities etc.

This section provides the amount of the fee payable under item 5 of subsection 113(1) of the FATA where the action was to:

acquire a direct interest in an Australian entity or business that is an agribusiness;

acquire interests in securities in an entity;

issue securities in an entity;

acquire interests in assets of an Australian business;

acquire interests in an Australian media business;

acquire a direct interest in an Australian entity or business (where the action is taken by a foreign government investor); and

acquire certain mining interests (where the action is taken by a foreign government investor).

The fee is calculated in the same way as the fee to acquire an interest in certain entities under Division 2 of Part 2 of the Fee Regulations.

#### Section 22 – Significant actions – entering or terminating certain agreements, or altering constituent documents

This section provides the amount of the fee payable for an action covered by item 5 of the table in subsection 113(1) of the FATA, where the action was to:

enter an agreement relating to the affairs of the entity (under paragraph 40(2)(d) of the FATA);

alter a constituent document (under paragraph 40(2)(e) of the FATA); or

enter or terminate a significant agreement with an Australian business (under paragraph 41(2)(c) of the FATA).

The fee is the same fee that is payable under section 16 of the Fee Regulations. This is a flat fee of \$12,700 (indexed).

#### Section 23 – Significant actions – acquisitions of interests in Australian land

This section provides the fee payable if item 5 of the table in subsection 113(1) of the FATA applies and the action is a significant action of a foreign person acquiring an interest in Australian land. In this circumstance, the amount of the fee payable is worked out in accordance with the fee payable for a notifiable action to acquire land.

#### Section 24 – Notifiable national security actions

This section provides the amount of the fee payable if item 5 of the table in subsection 113(1) of the FATA applies to a notifiable national security action. In this circumstance, the amount of the fee payable is worked out in accordance with section 13 of the Fee Regulations.

#### Section 25 – Reviewable national security actions

This section provides the amount of the fee payable, if item 5 of the table in subsection 113(1) of the FATA applies to a reviewable national security action. The fee payable is equal to the fee calculated under section 17 of the Fee Regulations.

### **Division 6 - Fees for applying for certain variations**

#### Section 26 – Fees covered by this Division

This section explains that Division 6 of Part 2 of the Fee Regulations sets out how to determine the amount of the fee payable when a person applies for a variation of a no objection notification or a notice imposing conditions.

#### Sections 27 and 28 – Applying to vary a no objection notification and Applying to vary a notice imposing conditions

Sections 27 and 28 of the proposed Fee Regulations would provide that the applicable fee for an application to vary a no objection notification or notice imposing conditions depends on whether the variation is, or is not, of an immaterial or minor nature.

Where the variation is immaterial or minor in nature, the amount of the fee would be \$2,000. In general, an example of a variation that would be considered of an immaterial or minor nature is an application to correct a typographical error.

If a variation is not of an immaterial or minor nature, the fee applicable would be \$12,700. The fees are subject to indexation.

Variations that would not be considered immaterial or minor in nature are ones where the Treasurer would need to consider the national interest or national security test again. In general, examples where a request for a variation would not be considered of an immaterial or minor nature include:

- When the applicant wants to change or remove a condition imposed on them;
- Identifying a company that was incorporated after the no objection notification was given; or
- Extending the validity period.

If the applicant paid a lower fee when the action was originally notified to the Treasurer, then the fee payable to vary the no objection notification or notice imposing conditions would be capped at the lower initial application fee.

Consistent with existing section 115 of the FATA, the Treasurer is also able to waive or remit a fee where that is appropriate.

### **Division 7 - Fees for Exemption certificates**

#### Subdivision A – Applications for exemption certificates

##### Section 29 – Fees covered by this Subdivision

This section explains that Subdivisions A and B of Division 7 of Part 2 of the Fee Regulations set out how to determine the amount of fee payable when a person applies for an exemption certificate.

##### Section 30 – Exemption certificates under section 57 (new dwellings) of the FATA

This section provides that the fee payable when an application is made for a new dwelling exemption certificate under section 57 of the FATA is \$27,100 (indexed).

However, the fee is nil if the person has already applied for a residential land (near-new dwelling interest) exemption certificate, or been given such a certificate, and the certificates apply (or would apply) to the same development.

##### Section 31 – Residential land (near-new dwelling interests) certificates

This section provides that the fee payable when an application is made for a residential land (near-new dwelling interests) exemption certificate is \$27,100 (indexed).

However, the fee is nil if the person has already applied for a residential land (new dwelling) exemption certificate, or been given such a certificate, and the certificates apply (or would apply) to the same development.

##### Section 32 – Certificates under section 59 of the FATA (about established dwellings) or residential land (other than established dwellings) certificates.

This section provides the amount of the fee payable for an application for an exemption certificate for an established dwelling or an exemption certificate for residential land (other than established dwelling). The amount is the fee that would be payable for an acquisition of residential land not being made under an exemption certificate.

## Example 5

A foreign person who is temporarily living in Australia for work seeks to acquire an established dwelling in Bondi as a primary residence while working in Australia.

Since many established dwellings sell at auction, the foreign person applies for a certificate under section 59 of the FATA for exemption to acquire any one established dwelling in Bondi up to \$1 million. The fee for this exemption certificate is \$6,350.

### Section 33 – Other kinds of exemption certificates

Section 33 provides how to calculate the fee for exemption certificates for:

- Acquisitions in Australian land;
- Businesses or entities;
- Interests in tenements and mining, production or exploration entities;
- Notifiable national security actions; and
- Reviewable national security actions.

The fee payable for an application for one of the following certificates is 75 per cent of the sum of the fees that would apply for the kinds of actions covered by the certificate had the applicant applied for a single approval for each of those actions:

- Acquisitions in Australian land;
- Businesses or entities;
- Interests in tenements and mining, production or exploration entities; and
- Notifiable national security actions.

The fee for an exemption certificate which covers reviewable national security actions is 25 per cent of the sum of the fees that would be payable for each of the actions if the actions covered by the certificate were taken individually. This is 25 per cent of the fees that are calculated under the general rule in Division 2, rather than the rules in Division 3 and Division 4 (which already reduce the fee payable for reviewable national security actions by 25 per cent).

The table in subsection 33(3) of the Fee Regulations sets out how to determine the fee for the actions that would be covered by an exemption certificate by section 33.

#### *Residential land (Item 1 of the table in subsection 33(3))*

Where the action is to acquire interests in residential land, calculate the fee that would be payable under Subdivision B of Division 2 as if the multiple residential land

acquisitions covered by the exemption certificate were a single residential land acquisition and the consideration was the sum of the values of all the residential land acquisitions.

*Agricultural land (Item 2 of the table in subsection 33(3))*

Where the action is to acquire interests in agricultural land, calculate the fee that would be payable under Subdivision B of Division 2 as if the multiple agricultural land acquisitions covered by the exemption certificate were a single agricultural land acquisition and the consideration was the sum of the values of all the agricultural land acquisitions.

*Actions that are not covered by any other item in the table (Item 3 of the table in subsection 33(3))*

This item would cover acquisitions of commercial land, tenements, securities in an entity and interests in the assets of a business.

To calculate the fee payable, ‘deem’ all the actions to be a single acquisition of commercial land and determine the fee payable for an acquisition of commercial land under Subdivision B of Division 2 where the consideration is the sum of all the values of the consideration of the actions covered by the Item 3 of the table in subsection 33(3).

*Actions involving starting a national security business or an Australian business (Item 4 of the table in subsection 33(3))*

Where the action is to start a national security business or an Australian business the fee would be the sum of the fees that would be payable for each of those actions as provided for in the proposed Fee Regulations.

*Certain notifiable national security actions and reviewable national security actions (Item 5 of the table in subsection 33(3))*

Where the action is to:

- enter an agreement relating to the affairs of an entity as mentioned in subparagraph 55D(2)(a)(ii) of the FATA;
- alter a constituent document of an entity as mentioned in subparagraph 55D(2)(a)(iii) of the FATA; or
- enter or terminate a significant agreement with an Australian business as mentioned in subparagraph 55E(1)(a)(iii) of the FATA,

Then the fee is the sum of the fees that would be payable for each of those actions as provided for in the Fee Regulations. These actions attract a flat fee.

### **Example 6**

A foreign person applies for a single exemption certificate under section 58 of the FATA to undertake a program of acquisitions of interests in Australian land. As part of the application, the person wants to acquire \$5 million in residential land, \$15 million in agricultural land, \$75 million in commercial land, and \$50 million in mining tenements. The amount of fee for this application is equal to 75 per cent of the sum of the fees for notifiable actions to acquire \$5 million in residential land, \$15 million in agricultural land, and \$125 million in commercial land. That is, the amount of fee payable is 75 per cent of (\$50,800 + \$88,900 + \$25,400), which is equal to \$123,825.

### **Example 7**

A foreign person applies for a single reviewable national security exemption certificate to undertake a program of acquisitions of interests in businesses which are reviewable national security actions. As part of the application, the person wants to acquire four businesses each with a consideration of \$20 million. The amount of the fee for this application is equal to 25 per cent of the sum of the fees for notifiable actions to acquire \$80 million in commercial land. That is, the amount of the fee payable is 25 per cent of \$12,700, which is equal to \$3,175.

#### Subdivision B - Applications for multiple exemption certificates

Subdivision B of Division 7 of Part 2 of the Fee Regulations sets out the rules for determining the fee payable when a person applies for multiple exemption certificates when an existing certificate is in force or when the applications are made within close proximity of each other. The method for determining the fee payable under Subdivision B applies instead of the fee that would be payable under Subdivision A of Division 7 of Part 2.

#### Section 34 – Application for residential land certificates covering a single proposed acquisition

This section applies to applications for residential land exemption certificates.

It provides that the person pays a lower fee if a person:

applies for an exemption certificate for residential land (the second certificate);

the person already has a certificate for that action (the first certificate);

that action has not been taken;

the first certificate is still in force;

the first and second certificate relate to a single proposal to acquire an interest in residential land; and

the person pays the fee payable for the first certificate at or before applying for the second certificate.

In these circumstances, the fee for the second certificate is nil if the fee for the first certificate had been paid and was higher or the same as the fee that would be payable for the second certificate. If the fee for the second certificate would be higher than the fee paid for the first certificate, the fee payable for the second certificate is the difference between the fee paid for the first and the fee payable for the second certificate.

### **Example 8**

A foreign person temporarily working in Australia has previously applied for and been granted an exemption certificate to acquire any one established dwelling in Bondi for \$1 million. After having attended several auctions without success, the foreign person seeks an exemption to acquire any one new dwelling in Bondi for \$1 million. Since the foreign person has not yet acquired a dwelling under the first certificate, and the requested consideration under both certificates is the same, the fee for the second certificate is adjusted to nil.

### Section 35 – Multiple applications for land, entities, tenements, and national security exemption certificates.

This section applies to applications for any of the following exemption certificates:

- a section 58 exemption certificate that covers residential land, agricultural land, and commercial land (whether vacant or not);
- a business or entities exemption certificate;
- a tenements and mining, production or exploration entities certificate;
- a notifiable national security exemption certificate; or
- a reviewable national security exemption certificate.

If at the time a person applies for one of the exemption certificates listed above, or within 14 days of the application the person applies for another exemption certificate of a kind listed above and at least one of the certificates would not be a reviewable national security certificate, the fee payable is the lesser of:

the total fee payable worked out in accordance with section 33 as if the applications were an action for a single certificate covered by subsection 33(1); and

75 per cent of the \$500,000 cap, making it \$375,000.

However, if all the certificates are reviewable national security exemption certificates, then the fee is calculated as the lesser of:

25 per cent of the amount worked out under section 33; and

25 per cent of the \$500,000 cap, making it \$125,000.

### **Example 9**

A foreign person applies for one land exemption certificate covering \$5 million in agricultural land. Five days later, the applicant also applies for another exemption certificate covering \$150 million in commercial land. The fee applicable is the sum of 75 per cent of the fee for \$5 million in agricultural land, being \$19,050 and \$150 million in commercial land, being \$19,050. The total fee payable is \$38,100. Had the applicant instead applied at the same time for one land exemption certificate covering \$5 million in agricultural land and \$150 million in commercial land, the same fee would be applicable.

### **Example 10**

A foreign person wishes to make a \$100 million program of acquisitions of Australian land. Since Australian land may also be national security land, the foreign person applies for a land exemption certificate and a national security exemption certificate. As long as the applicant submits the applications for the two exemption certificates within 14 days of each other, only one fee is payable based on the entire consideration. Further, since the applicant may not know the exact proportion of the total value of acquisitions that will be national security land, they may want to ensure they could acquire up to \$100 million under each exemption certificate. So long as the applicant is only seeking approval for \$100 million in total across both certificates, the fee would be calculated on this consideration.

### **Example 11**

A foreign person wishes to make a program of acquisitions of securities in entities. Some of these entities to be acquired may also be land entities under section 13 of the FATR. The applicant submits an application for a land exemption certificate and a business and entities exemption certificate within 14 days, to ensure only one fee is payable based on the entire consideration.

### **Example 12**

A person applies for an exemption certificate to acquire \$1 billion worth in commercial land interests in shopping centres around Australia. The person recognises that, depending on the value and structure of the transactions, some of the interests to be acquired may be significant actions, notifiable actions, notifiable national security actions or reviewable national security actions. Therefore, the person

applies for a land exemption certificate, a national security exemption certificate and a reviewable national security exemption certificate.

If the person is unable to specify what proportion of the \$1 billion will at least be spent on reviewable national security actions, the applicable fee is 75 per cent of the fee for \$1 billion worth of commercial land (i.e. \$180,975).

Alternatively, if the person specified that at least \$300 million of the \$1 billion will be reviewable national security actions, the applicant may apply separately for a single reviewable national security exemption certificate to cover this amount and pay the lower fee (\$15,875) for this certificate. The remaining \$700 million could still be considered under a combined application for land, notifiable national security, and reviewable national security exemption certificates, and would have a fee of \$123,825.

### Subdivision C - Ongoing fees for exemption certificates for new dwellings and near new dwellings

#### Section 36 – Simplified outline of this Subdivision

This section provides a simplified outline of Subdivision C of Division 7 of Part 2 of the Fee Regulations. This subdivision addresses the fees payable for certain types of exemption certificates that have a 6-monthly fee in addition to the initial application fee.

#### Section 37 – Ongoing 6-monthly fees for developers given exemption certificates under section 57 (new dwellings) of the FATA

This section provides the fee that is payable by a developer every six months for each new dwelling acquisition that occurs during that period. The fee payable is worked out in accordance with the fee calculated under sections 9, 10 and 11 for each acquisition of an interest in residential land.

#### Section 38 – Ongoing 6-monthly fees for developers given residential land (near-new dwelling interests) certificates

This section provides the fee that is payable by the developer every six months for each near-new dwelling acquisition that occurs during that period. The fee payable is worked out in accordance with the fee calculated under sections 9, 10 and 11 for each acquisition of an interest in residential land.

### Subdivision D - Fees to vary exemption certificates

### Section 39 – Fees covered by this Subdivision

This section provides that Subdivision D of Division 7 of Part 2 of the Fee Regulations sets out the amount of the fee that is payable by a person when they apply to vary their exemption certificate.

### Section 40 – Variations of exemption certificates

This section provides that the applicable fee for an application to vary an exemption certificate depends on whether the variation is immaterial or minor in nature. An example of an immaterial or minor variation is an application to correct a typographical error. If a variation is immaterial or minor in nature, the applicable fee is \$2,000 (indexed).

A higher fee of \$12,700 (indexed) is payable for all variations not immaterial or minor in nature.

Variations that would not be considered immaterial or minor in nature are ones where the Treasurer would need to consider the national interest or national security test again. In general, examples where a request for a variation would not be of an immaterial or minor nature include:

- when the applicant wants to change or remove a condition imposed on them;
- adding in a new applicant; or
- extending the validity period.

If the applicant paid a lower fee for the original application than the fee that would be payable for the variation, then the fee payable is the lower fee. This ensures an applicant does not pay a higher fee to vary their exemption certificate than they paid to acquire the exemption certificate.

However, a nil fee is payable if the person applied to vary a residential land (near-new dwelling) certificate and at the time of the application the person already had (or had applied) for an exemption certificate to cover the same development.

## **Division 8 - Fees for internal reorganisations**

### Section 41 – Fees for internal reorganisations

This section provides that if an action meets the definition of an ‘internal reorganisation’, the fee applicable is \$12,700 (indexed). An action constitutes an internal reorganisation when it involves acquiring interests in securities, and both the acquiring and target entities are subsidiaries of the same holding entity, or when the target entity is a subsidiary of the acquiring entity.

When an action involves acquiring interests in an asset or Australian land or tenements, an action is considered an internal reorganisation if both the acquiring and target entity are subsidiaries of the same holding entity, the target entity is a holding

entity of the acquiring entity or when the target entity is a subsidiary of the acquiring entity.

If the internal reorganisation is comprised entirely of reviewable national security actions, the fee is 25 per cent of the fee payable for an internal reorganisation.

### **Part 3 - Vacancy fees**

#### **Section 42 – Fees covered by this part**

This section explains that Part 3 of the Fee Regulations sets out how to work out vacancy fees for dwellings on residential land. This section also defines ‘relevant acquisition’ as an acquisition of an interest in residential land.

#### **Section 43 – Acquisition was a notifiable action notified under section 81 of the FATA**

This section provides that the vacancy fee payable for the acquisition of an interest in residential land that was notified by the person under section 81 of the FATA is the same as:

- the fee that was payable by the person for giving a notice of the acquisition, or
- if that fee was waived, the amount of the fee listed at item 1 of the table in section 10 of the Fee Regulations. That amount is \$6,350 (indexed).

#### **Section 44 – Acquisition was covered by a new dwelling exemption certificate or a residential land (near-new dwelling) exemption certificate**

This section provides that the vacancy fee for the acquisition of an interest in residential land that was covered by a new dwelling or near-new dwelling exemption certificate is equal to the notification fee that would have been charged if the person did not have the exemption certificate and instead was required to notify of the acquisition under section 81 of the FATA.

#### **Section 45 – Acquisition was covered by another kind of exemption certificate**

This section provides that the vacancy fee for an acquisition covered by an exemption certificate not mentioned in section 43 of the Fee Regulations is:

- the fee payable for applying for that exemption certificate; or
- if that fee was waived, the lowest fee for that exemption certificate.

Section 46 – Acquisitions for which an order is made under Division 2 of Part 3 of the FATA or no objection notification is given

This section provides the vacancy fee for an acquisition of residential land that the Treasurer made an order or decision about. The vacancy fee is:

- the fee payable for giving a notice of an acquisition of residential land; or
- if that fee was waived, the amount listed at item 1 of the table in section 10 of the proposed Fee Regulations. That amount is \$6,350 (indexed).

**Part 4 - Adjusting Fees**

Section 47 – Simplified outline of this Part

This section provides the simplified outline of Part 4 of the Fee Regulations. The simplified outline explains that despite other parts of the Fee Regulations, Part 4 sets out how a fee may be adjusted.

**Division 2 – Fees where more than one action taken**

Subdivision A – Single action of more than one kind that could result in more than one fee

Section 48 – Single action of more than one kind that could result in more than one fee

This section sets out how to determine the fee payable if a single action is an action of more than one kind or the action is an acquisition of Australian land and the land is more than one kind of land.

The fee payable is the highest fee payable for a single action, disregarding the fee payable for the other kind of action or land.

### **Example 13**

A foreign government investor proposes to acquire 100 per cent of the securities in an entity that predominately owns interests in mining and exploration tenements for \$290 million. As a result of the one transaction, the foreign government investor may be taken to have acquired a substantial interest in an Australian entity, acquired an interest in securities in an entity, acquired a direct interest in an Australian entity, acquired an interest in the securities of a land entity and acquired an interest of more than 10 per cent in a mining, production or exploration tenement entity.

Section 48 of the Fee Regulations provides that the foreign government investor would only be liable for a single fee, being the highest of the possible single fees applicable for the transaction.

### **Example 14**

A foreign person acquires an interest in agricultural land that contains a dwelling and is not used wholly and exclusively for a primary production business. As a result, the foreign person may be taken to acquire an interest in both residential land and agricultural land. Despite this, only the single highest possible fee is payable for the acquisition.

This section would not apply if one of the following provisions of the Fee Regulations applies instead:

- section 41 (fees for internal reorganisations);
- section 53 (fees if the consideration is less than \$75,000);
- section 54 (fees for majority owners);
- section 55 (fees for leaseback acquisitions); or
- section 56 (fees for securities in a land entity).

#### Subdivision B – Single agreement covers more than one action

Subdivision B of Division 2 of Part 4 provides a method for working out the fee payable when two or more actions are covered under a single agreement.

This is different to the scenario addressed in Subdivision A of this Part, where a single action or interest (for example, to acquire interests in the securities of a single entity) is covered by more than one provision.

This Subdivision instead addresses the scenario where a single agreement (which might involve several closely linked and interdependent transactions) results in a foreign person taking several related actions. It is also possible that each action could be covered by more than one provision. Those actions need to be first reconciled under Subdivision A.

For example, a foreign person may enter into a single sale agreement to acquire several legally distinct titles of land that together form a single farm business. As the acquisitions of these titles are covered under a single agreement, this Subdivision would provide the total fee for these actions, worked out according to the value and kinds of interests to be acquired, without necessarily considering (or considering to the same extent), the number of legal interests being acquired separately.

#### Section 49 – Adjustment to the fees payable for the actions to which this Subdivision applies

This section sets out when Subdivision B of Division 2 of Part 4 applies to determine the amount payable. Subdivision B applies if two or more actions are covered by one agreement. However, Subdivision B only applies if the one agreement covered at least two or more actions after disregarding those actions covered by the following:

- section 41 (fees for internal reorganisations);
- section 53 (fees if the consideration is less than \$75,000);
- section 54 (fees for majority owners);
- section 55 (fees for leaseback acquisitions); or
- section 56 (fees for securities in a land entity).

The fees payable for actions that meet one or more of the above rules are worked out separately, with a separate fee payable for those actions in addition to the fee amount for remaining actions worked out in this subdivision.

If any of the remaining actions are covered by more than one provision (and/or relate to the acquisition of an interest in a land entity), the actions are treated under this subdivision only after having been adjusted under section 48 (for actions that are covered by more than one kind) or section 56 (for acquisitions of interests in land entities). This ensures that no action will be ‘double counted’ when working out applicable fee amounts under sections 50, 51 and 52.

For example, if an action is to acquire an interest in Australian land and the land is land of more than one kind, then the action is adjusted under section 48, and treated as if it were the kind of action for which the highest fee applies. Once adjusted, the action could be considered alongside any other remaining applicable actions under sections 50, 51 and 52.

#### Sections 50, 51 and 52

Sections 50, 51 and 52 together provide for how the fee is worked out if there are multiple actions covered in one agreement. Broadly, the fee is the sum of the fees payable for the various actions, worked out by applying the aggregate consideration for each kind of action as the value for that kind of action.

#### Section 50 – Amount of the adjusted fees for the applicable actions

This section provides how to determine a single fee when an agreement covers more than one action.

First, the actions covered by the one agreement are split into two groups (an ‘action group’); those actions that are reviewable national security actions and those actions that are not reviewable national security actions. This split enables the lower fee structure that applies for a single reviewable national security actions to apply for those kinds of actions taken under a single agreement.

Then, for each action group, work out the fee for that group of actions by summing the fee for each kind of action within the group.

Finally, the fee payable is the sum of the fees determined for each action group.

Working out the fee payable for some of the actions in an action group relies on other sections being inserted by the Fee Regulations – sections 51 and 52.

Section 50 of the Fee Regulations provides that if an action within an action group is to start an Australian business (foreign government investor), start a national security business, or to start an Australian business (a reviewable national security action), then the fee payable for all those actions is the fee that would apply for a single action of that kind.

Section 50 of the Fee Regulations also provides how to determine the amount of the fee payable if one or more of the actions in the action group is about:

- entering or altering a constituent document
- entering or terminating a significant agreement) of the FATA; or
- entering into an agreement that is a reviewable national security action; or
- entering or terminating an agreement that is a reviewable national security action.

The fee for these actions is equal to the fee for a single equivalent notifiable action, significant action or reviewable national security action.

Section 51 of the Fee Regulations sets out how to work out the fee payable where one or more actions in an action group involves acquiring an interest in Australian land or in a tenement.

Section 52 of the Fee Regulations sets out how to work out the fee payable for certain ‘business acquisitions’, such as where one or more actions in an action group is an action:

- about acquisitions of interests in certain entities;
- about issuing securities in an entity;
- about a foreign person acquiring an interest in an Australian media business;
- about a foreign government investor acquiring a direct interest in an Australian entity or an Australian business; or
- about a foreign government investor acquiring certain mining interests.

The single fee for the actions taken under the one agreement is the sum of the fees worked out for each group of actions.

Section 51 – If actions in an action group involve acquiring an interest in Australian land or in a tenement

This section provides how to determine the fee payable where one or more actions under one agreement that have been grouped together in an action group involve acquiring an interest in Australian land or in a tenement.

If there is only one land action in the action group, then the fee is worked out in the same way the fee for that action would otherwise have been worked out under the Fee Regulations.

**Example 15**

A foreign person is proposing to acquire an interest in commercial land for \$100 million. As this is the only land action, the applicable fee for the land action is \$12,700. A separate fee is payable for any other actions that are not land actions (such as actions in another action group).

If the action group includes two or more land actions, the following method is used to determine the fee for these actions:

- Step 1. Determine the total consideration of each kind of relevant land. This could result in three separate values: the total value of residential land, the total value of agricultural land, and the total value of commercial land and tenements. The sum of these values is the total consideration for the land actions.
- Step 2. The second step is to determine which kind of relevant land is the dominant land type. This will be the land that has the highest of those sums.
- Step 3. The third step is to determine the fee payable on the basis that the dominant kind of land was the single land type being acquired and determining the fee payable based on the summed consideration of the kinds of relevant land.

If the sum of the consideration of two or more kinds of relevant land are equal, then the dominant kind of land is the kind of relevant land that would give the highest fee.

### **Example 16**

Under one agreement, a foreign person proposes to take two or more land actions that are notifiable actions. In this case, the foreign investor is seeking to acquire \$4 million of agricultural land and \$180 million of commercial land, which has a total consideration of \$184 million. The dominant land type is the highest of those sums, which is commercial land. This means the fee for the land actions is \$38,100. Assuming there are no further actions taken as part of this agreement, this is the final fee.

### Section 52 – If actions in an action group involve certain business transactions

This section provides how to determine the fee payable where one or more actions under one agreement that have been grouped together involve any of the following kinds of business actions:

- an action covered by paragraph 40(2)(a) or (b), 47(2)(a) or (b), 55B(1)(b) or (c) or 55D(1)(a) or subparagraph 55E(1)(a)(i) or (ii) of the FATA (about acquisitions of interests in certain entities);
- an action covered by paragraph 40(2)(c) or subparagraph 55D(2)(a)(i) of the FATA (about issuing securities in an entity);
- an action covered by section 55 of the FATR (about a foreign person acquiring an interest in an Australian media business);
- an action by a foreign government investor and covered by paragraph 56(1)(a) of the FATR (about a foreign government investor acquiring a direct interest in an Australian entity or Australian business);
- an action by a foreign government investor and covered by paragraph 56(1)(c) of the FATR (about a foreign government investor acquiring certain mining interests).

If there is one business action, then the fee worked out is equal to the fee that would have otherwise been worked out under the Fee Regulations.

### **Example 17**

A person proposes to acquire two entities under one agreement. One of the entities is a reviewable national security action, and both are valued at \$100 million each. The fee for the actions covered under the agreement is equal to sum of the fee for the single entity in the reviewable national security action group (\$3,175) and the fee for the entity in the other action group (\$12,700). The total fee payable is \$15,875. If there are two or more business actions, then the fee payable is the fee that is determined based on the sum of the value of the consideration for the business actions.

### **Example 18**

Under a single agreement, a foreign person proposes to acquire shares in two entities while also acquiring the assets of a separate business. The total value of consideration for these actions under the agreement is \$150 million. Since all of these actions are business actions, the fee for these actions is \$25,400.

Any actions to acquire an interest in a land entity are treated as an interest in land under this subdivision and are therefore not included in this section.

### **Division 3 - Other grounds for adjusting fees**

#### **Section 53– Fee payable if the value of the consideration is less than \$75,000**

This section provides for a new de minimis rule consideration fee, which could apply to any action under the FATA other than internal reorganisations or entering or terminating certain agreements or altering constituent documents.

The rule provides that if the consideration for the action is less than \$75,000, then the fee payable is \$2,000 (indexed). This rule applies to land applications (residential land, agricultural land, commercial land, and mining and production tenements), business, entity and securities related actions and notifiable national security actions.

However, if the action is a reviewable national security action and the consideration for the action is below \$75,000, the fee payable is 25 per cent of the \$2,000 fee (indexed).

If an agreement covers two or more actions, and the value of the consideration for each action under the agreement is less than \$75,000, the total fee payable is \$2,000 (indexed). However if all the actions are reviewable national security actions under the one agreement, then the total fee payable is 25 per cent of the \$2,000 (indexed) fee.

### **Example 19**

A foreign investor is proposing to acquire five agricultural land titles, four of which are low value easements. Each agricultural land easement has a consideration value of \$50,000 (each of themselves a de minimis action), while the remaining agricultural land title has a

consideration value of \$2 million. In this instance, the relevant fee is the sum of \$2,000 (for the four de minimis actions) and \$6,350 for the remaining agricultural land title, with a total fee of \$8,350.

#### Section 54 – Majority owners

This section establishes a ‘majority owner rule’ to determine the fee payable. If a foreign person already holds a 50 per cent interest in: Australian land or a tenement, securities in an entity, or assets of an Australian business and wishes to acquire a greater interest, then a lower fee of \$2,000 is payable.

However if the action is a reviewable national security action and the majority owner rule applies, then the fee is 25 per cent of the \$2,000 fee.

#### **Example 20**

A foreign person holds a 60 per cent interest in securities in an Australian entity, Company A, 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. As the foreign person holds more than 50 per cent in the entity, the ‘majority owners’ fee rule applies to make the applicable fee \$2,000.

If an agreement covers two or more actions, and the majority owner rule applies, the total fee payable is \$2,000 (indexed). However if all the actions are reviewable national security actions under the one agreement and the majority owner rule applies, the total fee payable is 25 per cent of the \$2,000 (indexed) fee.

This section does not apply if the action is considered an internal reorganisation or if the consideration of the action is less than \$75,000.

#### Section 55 – Acquisition of leasehold interest after sale of freehold interest

This section provides that a \$2,000 fee (indexed) is payable for acquisitions of leasehold interests after a sale of a freehold interest.

That is, where a foreign person acquires a leasehold interest in Australian land, and that foreign person previously held a legal interest in that land and sold that legal interest to the lessor, then the fee payable for the notice that the foreign person is taking a leasehold interest in the land is \$2,000.

However, if the action is a reviewable national security action, the fee payable is 25 per cent of the \$2,000 fee (indexed).

Where an agreement covers two or more actions that involve the acquisition of a leasehold interest after the sale of a freehold interest, those actions have a total fee of \$2,000 combined. Similarly, if all of the actions that meet the rule are reviewable national security actions, those actions have a total fee that is 25 per cent of \$2,000.

This section does not apply if the action is considered an internal reorganisation or if the consideration of the action is less than \$75,000 or if the majority owners rule applies.

### **Example 21**

A foreign person sells their farm to another person for \$10 million, with the condition that the foreign person is permitted to lease the farm for 10 years. Since the foreign person previously owned the legal interest in the farm, and the vendor of those interests would be the lessor of the lease, the fee for the foreign person to acquire the leasehold interest is \$2,000.

### **Example 22**

A foreign person proposes to take three actions to acquire interests in agricultural land. The first two actions each satisfy the requirements of both the de minimis rule and the ‘majority owners rule’, and the third action satisfies the ‘lease back rule’ set out in this section. A fee of \$2,000 is payable for the first two actions since they satisfy the de minimis rule. A fee is not payable for these same actions under the ‘majority owner rule’ as the de minimis rule takes precedence. A fee of \$2,000 is also payable for the third action. The total fee for the three actions is \$4,000.

### Section 56 – Acquisition of securities in a land entity

This section sets out the rules for determining the fee amount for an acquisition of securities in a land entity. Section 12 of the FATA defines that an interest in Australian land includes an interest in a land entity. Section 13 of the FATR defines what a land entity is.

An action that is to acquire an interest in Australian land by acquiring an interest in a land entity may also be covered by provisions about other actions to acquire certain interests in entities. As a result, it may be unclear how to treat this action when it is taken in an agreement that includes other kinds of actions.

This section provides that an action to acquire interests in a land entity is not treated as an interest in an entity for the purposes of the Fee Regulations.

Instead, the action is treated as an acquisition of an interest in Australian land of the same kind as the entity’s ‘dominant land holding’. The consideration is equal to the consideration of the acquisition of the interest in the land entity (which may exceed the value of the land holdings of the entity). The fee payable for the action is worked out in Part 2 of the Fee Regulations.

Subsection 56(2) provides how to work out the land entity’s dominant land holding. The dominant land holding is determined by:

- first, identifying all the kinds of relevant land in which the entity holds an interest at the time of the acquisition;
- secondly, making an assessment of the total value of the interests in each of those kinds of relevant land; and

- finally, selecting the kind of relevant land with the highest total value.

### **Example 23**

A foreign person proposes to acquire 20 per cent of the issued securities of a land entity for \$50 million. A reasonable assessment of the value of the land holdings of the land entity for each kind of relevant land is: \$100 million in commercial land; \$60 million in agricultural land; and \$50 million in residential land.

Since commercial land is the kind of relevant land with the highest total value, it is the dominant land holding of the entity. Therefore, the acquisition of the securities in the land entity is treated as an acquisition of commercial land with a consideration of \$50 million (being the consideration for the actual transaction).

### **Example 24**

A foreign person is proposing to acquire three targets under one agreement, consisting of: a \$40 million entity that is considered a land entity (with predominately commercial land holdings), a \$5 million parcel of commercial land, and a \$15 million entity that is not a land entity.

To calculate the fee, the acquisition of the land entity is treated as an acquisition in land. As the actions are part of the same agreement, the fee for the land entity is worked out with the other land actions. Both land actions are acquisitions of commercial land, so the fee for these acquisitions is equal to the fee for a single acquisition of commercial land with a consideration of \$45 million (\$6,350). This fee amount is added to the fee for the entity acquisition (\$6,350). The total fee payable is \$12,700.

### Section 57 – Jointly acquiring or holding interests in a security, asset, trust or Australian land

This section provides that if two or more people acquire interests in a security, asset, tenement, trust or Australian land as joint tenants, only one fee is payable. Each joint tenant is liable to pay the full fee, until the fee is paid. If one of the tenants pays a proportion of the fee, the fee that each joint tenant is liable to pay is reduced by that proportion. If a joint tenant pays the full amount, the fee remaining for all other tenants is reduced to nil.

### **Example 25**

Two joint tenants acquire an interest in a dwelling and are liable to pay a fee of \$12,700. After the first joint tenant pays \$10,000, both joint tenants are liable to pay the remaining \$2,700.

This section also provides that the fee payable by tenants in common in relation to an interest is the proportion of the fee payable for that interest equal to the tenant's percentage ownership of the interest.

### **Example 26**

Two foreign persons propose to acquire an interest in a title of agricultural land for \$2 million as tenants in common (with the first tenant to have an 80 per cent interest). The fee for the acquisition is \$6,350. Under this section, the first tenant is liable for 80 per cent of this amount (\$5,080) with the second tenant liable for the remainder (\$1,270).

Under section 114 of the FATA, if a fee is payable by a person for a notice or application, the person is not taken to have made the notice or application until the fee is either fully paid or waived.

### **Section 58 – Actions taken by wholly-owned groups**

This section provides that if an action is taken by a group of entities within the same wholly-owned group and one entity within the group has already paid the applicable fee, no further fees are payable. The action taken by the entities would either need to be under the same agreement, or where one of the entities within the same group has lodged an application on behalf of the other entities.

### **Example 27**

Four entities in a wholly-owned group give notice to acquire interests in securities in 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 \$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.

## **Part 5 - Indexation**

Fees are indexed every financial year. Indexation applies to each amount fee amount prescribed in the Fee Regulations and the amounts specified in section 10.

### **Section 59 – Specified fees and fee components are subject to indexation**

This section provides that each specified fee amount and fee component set out in the Fee Regulations is to be indexed from 1 July each year starting on or after 1 July 2021.

The section provides that an amount is indexed by multiplying it by its indexation factor. The methodology to determine the indexation factor is set out in section 60. If after indexation the specified fee and fee component is not a multiple of \$100, then it is to be rounded down to the nearest multiple of \$100. If the indexed amount for the current year is less than the indexed amount for the previous financial year, the indexed amount for the current year should be equal to the indexed amount of the previous year.

Indexation does not apply to the fee constants.

Where a fee is worked out as a percentage of another fee (for example, where the fee for giving notice of a reviewable national security action is 25% of the fee applicable for the equivalent notifiable action), indexation is only applied to the equivalent ordinary action fee. Any percentage is calculated on the rounded amount.

#### Section 60 – Indexation factor

This section provides how the indexation factor is calculated.

The indexation factor is:

The sum of the index numbers for the four quarters in the year ending on 31 March just before the start of the relevant financial year

Divided by:

The sum of the index number for the four quarters in the year ending on the previous 31 March

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

#### Section 61 – Index number

This section provides that the index number comes from the Australian Bureau of Statistics. It is the All Groups Consumer Price Index Number first published by the Australian Statistician for the quarter.

### **Part 6 - Application and transitional provisions**

#### Section 62 – Application of this instrument

The new provisions and method for calculating the fee payable apply to fees that become payable on or after 1 January 2021.

Despite the repeal of the *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015* by this instrument, that Regulation continues to apply in relation to fees that become payable before 1 January 2021

#### Sections 63 and 64 – Transitional provisions – applying to vary a no objection notification and applying to vary an exemption certificate

Sections 63 and 64 provide for transitional provisions to determine the appropriate fee to vary a no objection notification or exemption certificate where the fee payable for the no objection notification or exemption certificate was paid before 1 January 2021. When determining the appropriate fee to vary a no objection notification or exemption certificate, the fee that was paid in the original application should be compared.

For example an applicant received approval to acquire agricultural land in June 2020, and the fee payable at the time was \$2,000 as the consideration for that acquisition was less than \$2 million. In April 2021, the applicant decides to extend the validity period for a further 12 months. Under the Fee Regulations the fee payable for a

variation that is not considered immaterial or minor in nature is \$12,700. However, since the applicant paid \$2,000 for the original application, the variation fee would not exceed \$2,000.

### **Schedule 1 – Section 1**

Section 1 to Schedule 1 repeals *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015*.

**Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011**

The Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (the Fee Regulations) support a package of reforms to Australia's foreign investment screening regime, including to simplify the fee arrangements.

**Overview**

Fees are payable when a person:

gives notice of a notifiable action or a notifiable national security action;

gives a notice of a proposal to take either a significant action that is not a notifiable action or notifiable national security action or to take a reviewable national security action;

receives a notice that an action that is a reviewable national security action or a significant action that has not been notified may pose a national security concern;

applies for a variation of a no objection notification or notice imposing conditions;

applies for an exemption certificate;

applies for a variation of an exemption certificate;

retrospectively notifies the Treasurer of a significant action or a notifiable national security action;

has been given an order or has been provided a no objection notification without giving the Treasurer a notice relating to the action specified in the order or notification; and

is liable for a vacancy fee for acquisitions of residential land.

The Fee Regulations set the method for determining the fees payable.

The Fee Regulations do not engage Human Rights.