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HOUSE OF REPRESENTATIVES

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Foreign Acquisitions and Takeovers Fees Imposition Bill 2015

No. , 2015

(Treasury)

**A Bill for an Act to impose, as taxes, fees under the
Foreign Acquisitions and Takeovers Act 1975, and
for related purposes**

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**A Bill for an Act to impose, as taxes, fees under the
Foreign Acquisitions and Takeovers Act 1975, and
for related purposes**

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Foreign Acquisitions and Takeovers
Fees Imposition Act 2015*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 5 to 13	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) the commencement of Schedule 1 to the <i>Foreign Acquisitions and Takeovers Legislation Amendment Act 2015</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Extension to external Territories

This Act extends to every external Territory.

4 Definitions

- (1) In this Act:
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base amount has the meaning given by subsection 12(8).

base financial year has the meaning given by subsection 12(8).

Foreign Acquisitions Act means the *Foreign Acquisitions and Takeovers Act 1975*.

indexed amount has the meaning given by subsection 12(1).

index number has the meaning given by subsection 12(8).

internal reorganisation means an acquisition by an entity (the **first entity**) of:

- (a) an interest in securities in another entity if:
 - (i) both entities are subsidiaries of the same holding entity;
or
 - (ii) the other entity is a subsidiary of the first entity; or
- (b) an interest in an asset or Australian land from another entity if:
 - (i) both entities are subsidiaries of the same holding entity;
or
 - (ii) the other entity is the holding entity of the first entity; or
 - (iii) the other entity is a subsidiary of the first entity.

quarter has the meaning given by subsection 12(8).

this Act includes the regulations.

- (2) Subject to subsection (1), an expression used in this Act that is defined in the Foreign Acquisitions Act or regulations made for the purposes of that Act has the same meaning in this Act as it has in that Act or those regulations.

Section 5

Part 2—Imposition and amounts of fees

5 Imposition of fees

A fee payable under Part 6 of the Foreign Acquisitions Act is imposed as a tax by this section.

6 Fees for applications relating to exemption certificates

Fees generally

- (1) The amount of the fee for an application for an exemption certificate, or an application for a variation of an exemption certificate, is worked out in accordance with the following table.

Fees for certificates		
Item	The amount of the fee for an application for ...	is ...
1	an exemption certificate under section 57 of the Foreign Acquisitions Act	\$25,000.
2	an exemption certificate under section 58 of the Foreign Acquisitions Act	(a) if the application specifies that the consideration for the acquisitions will be \$1 billion or less—\$25,000; and (b) otherwise—\$100,000.
3	an exemption certificate under section 59 of the Foreign Acquisitions Act	(a) if the application specifies that the consideration for the acquisition will be \$1,000,000 or less—\$5,000; and (b) otherwise—the amount worked out under subsection (2).
4	an exemption certificate given under regulations made for the purposes of section 63 of the Foreign Acquisitions Act	the amount not exceeding \$25,000, that is prescribed by regulations, or worked out using the method prescribed by regulations, made for the purposes of this item.
5	a variation of an exemption	\$5,000.

Section 6

Fees for certificates

Item	The amount of the fee for an application for ...	is ...
	certificate under section 62 of the Foreign Acquisitions Act	

Note 1: For table item 1, see also subsection (3).

Note 2: **Consideration** is defined by regulations made for the purposes of the Foreign Acquisitions Act (see section 4 of that Act).

Note 3: See also sections 10 (fees for internal reorganisations), 11 (regulations may lower fees) and 12 (indexation of fees) of this Act.

Fees for applications for certain exemption certificates—consideration more than \$1,000,000

- (2) For the purposes of paragraph (b) of item 3 of the table, the amount of the fee is:

Purchase price number × \$10,000

where:

purchase price number is the amount worked out using the following formula, rounded down to the nearest whole number:

$$\frac{\text{Amount of consideration specified in the application}}{1,000,000}$$

Fees for exemption certificates given under section 57 of the Foreign Acquisitions Act—6 monthly fees for developers

- (3) The amount of a fee that is payable by a developer mentioned in subsection 113(2) of the Foreign Acquisitions Act at the end of a 6 month period is the total of the amounts that are payable under subsection (4) of this section for each new dwelling acquisition that occurs during the period.

Note: Subsections 113(3) and (4) of the Foreign Acquisitions Act define **6 month period** and **new dwelling acquisition**.

Section 7

- (4) The amount that is payable for a new dwelling acquisition is the amount that, at the time of the acquisition, would have been payable for the acquisition under item 2 of the table in subsection 7(1) of this Act assuming the acquisition had been a notifiable action.

7 Fees for giving notice of notifiable actions

- (1) The amount of the fee for giving a notice of a notifiable action under section 81 of the Foreign Acquisitions Act is worked out in accordance with the following table.

Fees for giving notice of notifiable actions		
Item	If the notifiable action is ...	the amount of the fee is ...
1	(a) to acquire a direct interest in an Australian entity or Australian business that is an agribusiness; or (b) to acquire a substantial interest in an Australian entity	(a) if the consideration for the acquisition is \$1 billion or less—\$25,000; and (b) otherwise—\$100,000.
2	to acquire an interest in residential land or agricultural land	(a) if the consideration for the acquisition is \$1,000,000 or less—\$5,000; and (b) otherwise—the amount worked out under subsections (2) and (3).
3	to acquire an interest in commercial land (other than commercial land that is vacant)	\$25,000.
4	to acquire an interest in commercial land that is vacant	\$10,000.
5	to acquire an interest in a mining or production tenement	\$25,000.
6	to take a notifiable action prescribed by regulations made for the purposes of section 48 of the Foreign Acquisitions Act	the amount not exceeding \$100,000, that is prescribed by regulations, or worked out using the method prescribed by regulations, made for the purposes of this item.

Section 8

Note 1: **Consideration** is defined by regulations made for the purposes of the Foreign Acquisitions Act (see section 4 of that Act).

Note 2: See also sections 10 (fees for internal reorganisations), 11 (regulations may lower fees) and 12 (indexation of fees) of this Act.

Fees for acquisition of interests in residential land or agricultural land—consideration more than \$1,000,000

- (2) For the purposes of paragraph (b) of item 2 of the table in subsection (1), the amount of the fee is:

Purchase price number × \$10,000

where:

purchase price number is the amount worked out using the following formula, rounded down to the nearest whole number:

$$\frac{\text{Consideration for the acquisition}}{1,000,000}$$

Cap on fees for acquisition of interests in agricultural land

- (3) If the amount of the fee under subsection (2) for an acquisition of an interest in agricultural land is more than \$100,000, the amount of the fee is \$100,000.

8 Other fees

- (1) The amounts of the following fees are worked out in accordance with the following table:
- (a) a fee for giving a notice of a proposal to take an action that is not a notifiable action (see items 1, 2 and 4);
 - (b) a fee for a person:
 - (i) in relation to whom an order was made under Subdivision A of Division 2 of Part 3 of the Foreign Acquisitions Act; or
 - (ii) to whom a no objection notification was given;

Part 2 Imposition and amounts of fees

Section 8

if the person did not give a notice to the Treasurer relating to the action specified in the order or notification (see items 1 to 4).

Other fees

Item	If the action is ...	the amount of the fee is ...
1	(a) to acquire an interest in securities in an entity that is not a substantial interest in the entity; or (b) to issue securities in an entity; or (c) to acquire interests in assets of an Australian business	(a) if the consideration for the issue or acquisition is \$1 billion or less—\$25,000; or (b) otherwise—\$100,000.
2	(a) to enter an agreement mentioned in paragraph 40(2)(d) of the Foreign Acquisitions Act; or (b) to alter a constituent document of an entity as mentioned in paragraph 40(2)(e) of the Foreign Acquisitions Act; or (c) to enter or terminate a significant agreement with an Australian business	\$25,000.
3	to take a significant action that is a notifiable action	the amount that would have been payable under section 7 or any other provision of this Act in relation to the action if a notice relating to the action had been given.
4	to take a significant action that is: (a) prescribed by regulations made for the purposes of section 44 of the Foreign Acquisitions Act; and (b) not a notifiable action	the amount not exceeding \$100,000, that is prescribed by regulations, or worked out using the method prescribed by regulations, made for the purposes of this item.

Note 1: **Consideration** is defined by regulations made for the purposes of the Foreign Acquisitions Act (see section 4 of that Act).

Note 2: See also sections 10 (fees for internal reorganisations), 11 (regulations may lower fees) and 12 (indexation of fees) of this Act.

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- (2) The amount of the fee for a person who applies under subsection 76(6) of the Foreign Acquisitions Act for a variation of a no objection notification is:
- (a) if the action specified in the notification is an acquisition of an interest in Australian land—\$5,000; and
 - (b) otherwise—\$10,000.

9 Fees where more than one action taken

- (1) If one agreement covers more than one action for which a fee is payable:
- (a) a separate fee is payable in relation to each acquisition of an interest in residential land covered by the agreement; and
 - (b) if the agreement covers more than one other action (disregarding any acquisitions of interests in residential land)—the amount of the fee payable is the highest of the amounts for those actions.

Note: Subsection (2) may affect how to determine the amount of a fee for a single action that may be characterised in more than one way.

- (2) If either or both of the following apply:
- (a) a single action is covered by more than one of the following (because the action is an action of more than one kind):
 - (i) paragraph 40(2)(a), (b), (c), (d) or (e) of the Foreign Acquisitions Act;
 - (ii) paragraph 41(2)(a), (b) or (c) of the Foreign Acquisitions Act;
 - (iii) paragraph 43(a) of the Foreign Acquisitions Act;
 - (iv) a provision of regulations made for the purposes of section 44 of the Foreign Acquisitions Act;
 - (b) a single action relating to land is covered by more than one subsection of section 52 of the Foreign Acquisitions Act (because the land is land of more than one kind);
- the amount of the fee payable in relation to the single action is the highest amount that applies.

Section 10

10 Fees for internal reorganisations

Despite sections 6 to 9, a fee payable in relation to one or more actions that constitute an internal reorganisation is \$10,000.

Note 1: A separate fee may be payable in relation to any other action covered by the same agreement as the internal reorganisation that is not part of the internal reorganisation.

Note 2: See also section 12 (indexation of fees).

11 Regulations may lower fees specified in this Part

- (1) Despite sections 6 to 10, instead of the amount of a fee specified in this Part (or the amount indexed under section 12) being payable in the circumstances specified, a lower amount (including a nil amount) is payable if the regulations prescribe, for those circumstances:
 - (a) the lower amount; or
 - (b) a method of working out the lower amount.
- (2) Without limiting subsection (1) or subsection 33(3A) of the *Acts Interpretation Act 1901*, if this Part specifies an amount of a fee that is payable in specified circumstances, the regulations may prescribe an amount or method in relation to only some of those specified circumstances.

Note: For example, the regulations may prescribe a lower amount for the purposes of item 2 of the table in subsection 7(1) only in relation to acquisitions of interests in agricultural land.

12 Indexation of fees

- (1) The amount of a fee specified in this Part or in regulations made for the purposes of this Part is to be indexed each financial year (except the base financial year) in accordance with this section. This section explains how to work out the amount (the ***indexed amount***) of a fee for a financial year.

Indexation

- (2) The indexed amount of the fee for the financial year is worked out in accordance with the formula:

Section 12

Base amount of the fee × Indexation factor for the financial year

- (3) The ***indexation factor*** for the financial year is the number worked out by dividing:
- (a) the sum of the index numbers for the quarters of the 12 month period ending on 31 March immediately before the financial year; by
 - (b) the sum of the index numbers for the quarters of the 12 month period ending on 31 March in the financial year immediately before the base financial year for the base amount.
- (4) The indexation factor is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (5) Fees are to be worked out under this section:
- (a) using only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and
 - (b) disregarding index numbers that are published more than 2 weeks after the original publication in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

Rounding

- (6) If an indexed amount worked out under subsection (2) would not be a multiple of \$100, the indexed amount is rounded down to the nearest multiple of \$100.

Indexation only to increase fees

- (7) However, if the indexed amount worked out under subsection (2) for a year (the ***current year***) (after any rounding under subsection (6)) is less than the indexed amount for the previous financial year, the indexed amount for the current year is the indexed amount for the previous financial year.

Section 12

Definitions

(8) In this Act:

base amount of a fee means the amount of the fee specified in this Part or in regulations made for the purposes of this Part.

base financial year for a base amount of a fee means:

- (a) if the amount is specified in this Part or in regulations made for the purposes of this Part when section 5 commences—the financial year in which that commencement occurs; or
- (b) if, after that commencement occurs, the amount is specified in this Part or in regulations made for the purposes of this Part—the financial year in which the amount is so specified; or
- (c) if the amount is specified in regulations made for the purposes of section 11—the financial year in which the amount is so specified; or
- (d) if the amount was specified in this Part or in regulations made for the purposes of this Part, and is otherwise changed (whether the change is the first change or a later change) by an amending Act or amending regulations, as the case requires—the financial year in which the amount is so changed.

index number, for a quarter, means the All Groups Consumer Price Index number from the original series, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

quarter means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April.

(9) For the purposes of this section:

- (a) the following amounts are not fees:
 - (i) the amount specified in the definition of **purchase price number** in subsections 6(2) and 7(2);
 - (ii) the amount of \$1 billion or \$1,000,000 specified in an item of the table in subsection 6(1), 7(1) or 8(1);

Section 12

- (iii) the amount of \$10,000 specified in subsections 6(2) and 7(2); and
- (b) the amounts specified in the following are taken to be fees:
 - (i) item 4 of the table in subsection 6(1);
 - (ii) item 6 of the table in subsection 7(1);
 - (iii) subsection 7(3);
 - (iv) item 4 of the table in subsection 8(1).

Note: Those provisions set out a cap on the amount of a fee.

Part 3—Regulations

13 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by the regulations; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.