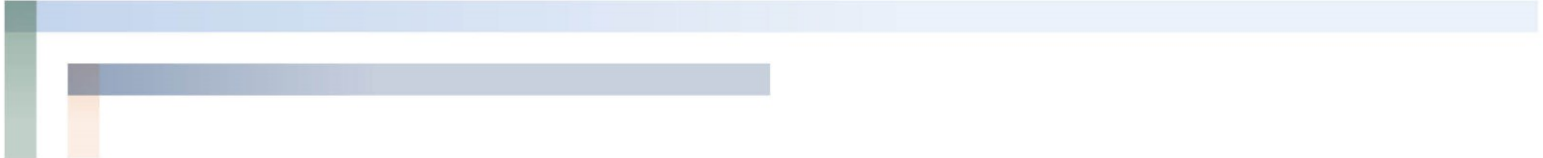




Guidance Note 10

Fees

- Foreign persons are required to pay a fee for each application made, or notice given, under the *Foreign Acquisitions and Takeovers Act 1975* (the **Act**) or the Foreign Acquisitions and Takeovers Regulation 2015 (the **Regulation**). The fee for a notice or application will generally depend on the value and kind of action that has been taken or is proposed to be taken.
- This Guidance Note explains how fees are calculated under the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* (the **Fees Act**) and the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020* (the **Fees Regulations**) for applications and notices.
- Fees are generally payable at the time an application or notice is lodged. For most applications, there is a period of 30 days for making a decision in relation to an application or notification will not start until the correct fee has been paid.
- An investor may give notice of multiple actions that are proposed to be taken under the same agreement. The fee payable for these actions may be adjusted under the single agreement rule.
- Other rules apply in particular circumstances that may result in a fee being adjusted. Investors should familiarise themselves with these rules.
- Fees are applicable where an investor wishes to vary a no objection notification, notice imposing conditions, or exemption certificate. Fees are also applicable where an action is called -in by the Treasurer or where an investor notifies the Treasurer of a retrospective action.
- There is an annual vacancy fee for foreign owners of residential dwellings if the dwelling is not residentially occupied or rented out for at least 183 days (approximately 6 months) in a year.
- The Treasurer may waive or remit the whole or a part of a fee that is payable, if satisfied that it is not contrary to the national interest. All applications for fee waivers or remissions will be considered on a case--by--case basis and all decisions are final.
- Fees are indexed on 1 July each year. Fees in this Guidance Note apply to the 2024-25 financial year. A complete Schedule of Fees can be found on the [Foreign Investment website](https://foreigninvestment.gov.au).



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A: When and how fees are payable

When you need to pay a fee

You need to pay a fee when:

- you make an application for an exemption certificate
- you give notice of a notifiable action, notifiable national security action, significant action, or reviewable national security action
- you are given notice of a national security review.

We refer to making an application for an exemption certificate or giving notice of a notifiable action, notifiable national security action, significant action, or reviewable national security action as “making a foreign investment application”.

How to pay the fee

Once a foreign investment application has been submitted through the Foreign Investment Portal, the investor/agent will receive an email message and a communication through the portal confirming receipt of the application. For residential land foreign investment applications, which are lodged through [Online Services for Foreign Investors](#) on the Australian Taxation Office (ATO) website, you will receive an on-screen confirmation containing the fee details.

For all other foreign investment applications, which are lodged through the Foreign Investment Portal, you will receive a fee estimate that will be displayed in the Portal. Within a few business days, you will receive a message through the Portal advising of details to make payment. The fee may be subject to change as a result of the review process. Once the fee has been paid, you will receive a notification by email and through the Portal, confirming receipt of payment which will include details of the decision period.

Portal messages will include your unique Payment Reference Number (PRN) and details about how to pay the fee. It is important to use the correct PRN when paying your fee. To ensure your payment is received, please provide your PRN exactly as it appears on the application confirmation page. Do not add spaces, names, hyphens or other text to the PRN. Missing or incorrect PRNs may cause a delay to the processing of your application.

Payment options include Credit/Debit card, BPay, Direct Credit and transfer from an overseas bank account. Fees paid by cheque will not be accepted. When paying the fee, ensure monies are in Australian dollars and all applicable transaction fees are accounted for, as a shortfall will delay application processing.

Once the fee is paid, the confirmation notification, including decision period, will be sent through the Portal and by email notification.



Fees and decision periods

For most foreign investment proposals, there is a period of 30 days within which a decision must be made. In most cases, the decision period will not commence until the correct fee has been paid.

For actions that have been called -in by the Treasurer,¹ the fee must be paid within 30 days of the call -in notice being given. In these circumstances, the decision period will commence once the notice is given rather than when the fee has been paid.

If a fee is overpaid, the decision period commences when the fee is paid. The overpaid amount will be refunded.

¹ See section 66A of the *Foreign Acquisitions and Takeovers Act 1975* (the **Act**).

B: Fee amounts

Fees apply to all foreign persons, including foreign government investors, unless otherwise specified.

The fee for most foreign investment applications is calculated by reference to the amount of the consideration for the action/s to which the application relates. See the *Key Concepts* Guidance Note for information about how to calculate consideration. The fee increases in steps in line with an amount of the consideration for the action called the fee constant. The fee constant for residential land is \$1 million; for agricultural land, \$2 million; and for commercial land, businesses, and entities, \$50 million.

The fee for a foreign investment application which relates to a reviewable national security action is usually 25 per cent of the fee for a foreign investment application for an equivalent notifiable action.

The fee for a foreign investment application cannot exceed a certain amount, known as the maximum fee. See [Maximum fees](#) for more information.

Some actions, such as starting a new business, do not have a clear amount of consideration. A flat fee is payable for foreign investment applications which relate to these actions. Flat fees are also payable for foreign investment applications which relate to other actions if those actions meet certain criteria. See [Adjusting fees and lower fee rules](#) for more information.

Most foreign investment applications relate to a single action, such as an acquisition of securities in an entity or title of land. See [Fees for a single action](#) for more information.

Some foreign investment applications relate to a group of actions that will be taken together under a single agreement. Fees for these applications are worked out as if each kind of action (for example, each acquisition of an interest in land) was a single action for which the consideration is the sum of the consideration for all of the actions of that kind. Some kinds of actions are not usually covered by the single agreement rule. For guidance on how to determine the kind of action that relates to a specific transaction, see [Determining the 'kind of action' taken](#). See [Fees for multiple actions](#) for more information.

You can also apply for an exemption certificate for interests or kinds of interests. The fee for an application for an exemption certificate depends on the type of certificate. For most kinds of exemption certificates, the fee is 75 per cent of the fee for an equivalent notifiable action. For an application for a reviewable national security action exemption certificate, the fee is 25 per cent of the fee for an equivalent notifiable action. For an application for a residential exemption certificate, fees are generally either equal to the fee for an equivalent notifiable action or a flat fee. See [Fees for exemption certificates](#) for more information.

Fee for a single action

The fee for a foreign investment application which relates to a single action can generally be determined by first establishing the kind of action being taken, and then, if applicable, working out the fee with respect to the relevant consideration value. See the *Key Concepts* Guidance Note for information on calculating consideration.

The table below summarises the fees for a single action. A complete schedule of fees can be found on the [Foreign Investment website](#).

Table 1: Kinds of actions and applicable fees (2024-25 financial year)

Kind of action		Applicable fees ^(a)
Land	<i>Residential land (established dwellings)</i>	Fee tiers increase every \$1 million of consideration. Fees start at \$44,100 for acquisitions of \$1 million or less, ^(b) rising to a maximum of \$3,514,800 for acquisitions of more than \$40 million.
	<i>Residential land (no established dwellings)</i>	Fee tiers increase every \$1 million of consideration. Fees start at \$14,700 for acquisitions of \$1 million or less, ^(c) rising to a maximum of \$1,171,600 for acquisitions of more than \$40 million.
	<i>Agricultural land</i>	Fee tiers increase every \$2 million of consideration. Fees start at \$14,700 for acquisitions of \$2 million or less, ^(c) rising to a maximum of \$1,171,600 for acquisitions of more than \$80 million.
	<i>Commercial land and tenements</i>	Fee tiers increase every \$50 million of consideration. Fees start at \$14,700 for acquisitions of \$50 million or less, ^(c) rising to a maximum of \$1,171,600 for acquisitions of more than \$2 billion.
Businesses and entities (excl. land entities)		
Starting an Australian business (including starting a national security business)		\$4,300 flat fee
Entering agreements and altering documents		\$29,500 flat fee
Internal reorganisations		\$29,500 flat fee

(a) If the action is a reviewable national security action, fees are calculated at 25 per cent of the fee for an equivalent notifiable action.

(b) The fee is \$12,900 if the consideration for the action is less than \$75,000. See [Adjusting fees and lower fee rules](#) for further information.

(c) The fee is \$4,300 if the consideration for the action is less than \$75,000. See [Adjusting fees and lower fee rules](#) for further information.

How to work out the fee for a single action

General rule

If the value of the consideration for the action is less than or equal to the relevant fee constant (which is \$1 million for residential land, \$2 million for agricultural land, and \$50 million for commercial land, tenements, businesses, and entities) the fee is usually \$14,700.

If the value of the consideration for the action is greater than the relevant fee constant, then:

- if the consideration is a multiple of the relevant fee constant, the fee is equal to $(\text{multiple} - 1) \times \$29,500$.
- if the consideration is not a multiple of the relevant fee constant, the fee is equal to $(\text{multiple (rounded down to the nearest whole number)}) \times \$29,500$.

Residential land with established dwellings

If the action is an action to acquire an interest in residential land with one or more established dwellings, the fee is 3 times the amount calculated according to the above method.

Example 1 – general rule (commercial land)

A foreign person proposes to acquire \$20 million of commercial land. The fee is \$14,700.

Example 2 – general rule (residential land—no established dwellings)

A foreign person proposes to acquire \$2 million of residential land with no established dwellings. The fee is \$29,500.

Example 3 – general rule (residential land—established dwellings)

A foreign person proposes to acquire \$2 million of residential land with one or more established dwellings. The fee is \$88,500.

Fees for actions covered by two or more provisions of the Act or the Regulation

Only one fee is payable for any action covered by the Act or the Regulation. If an action is an action because of more than one provision of the Act or the Regulation, or the action is an acquisition of Australian land and the land is more than one kind of land (for example, it is agricultural land and commercial land), then generally only the highest fee is payable.²

However, if one or more actions constitute an [internal reorganisation](#), the fee for an internal reorganisation applies regardless of any other provisions that cover the action or actions. Similarly, lower fees apply for actions that satisfy a [lower fee rule](#).

An acquisition of an interest in a land entity is treated as an acquisition of an interest in the dominant type of land held by the land entity according to the [dominant land holding rule](#).

Example 4 – single action covered by two or more provisions

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 transaction, the foreign government investor would 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 and acquired an interest of more than 10 per cent in securities in a mining, production or exploration tenement entity.

In this case, the fee is calculated by using the consideration (\$290 million) and applying it to the fee formula for acquiring an interest in commercial land, interest in a tenement, business or entity. The fee is \$147,500.

Example 5 – determining the fee for mixed-use land

A foreign person acquires an interest in agricultural land that contains a dwelling. The land 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 agricultural land and residential land. Despite this, only the single highest fee would be payable for the acquisition, being the fee payable for residential land.

² See section 48 of the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020* (the **Fees Regulations**).

Fees for multiple actions covered by a single agreement

In certain circumstances, a foreign person may be considered to take, or have taken, multiple actions as part of one transaction. These circumstances can include (but are not limited to):

- acquiring a consolidated group of entities (for example, by acquiring a single parent entity)
- acquiring a farm which includes several legal titles of land
- acquiring a business, which could involve acquiring the assets of a business and an interest in land (for example, a long commercial lease).

Separate fees will generally apply for each action. However, where multiple actions are taken together under a single agreement, the fees for each action will generally be adjusted so that the total fee depends on the aggregate consideration for each kind of action instead of treating each interest separately. The term “single agreement” is not defined in the Fees Regulations, but would be expected to depend on the following:

- whether there is a single contract or sale agreement or multiple inter-conditional agreements
- whether the targets are closely connected to one another (for example, if several titles of land are geographically contiguous)
- whether the vendors and/or the acquirers are connected to one another in similar ways.

Actions which constitute an [internal reorganisation](#) and actions which satisfy a [lower fee rule](#) (such as actions for which the consideration is less than \$75,000) are not usually covered by the single agreement rule. The fees for these actions are worked out separately. However, if a single agreement only covers actions for which the consideration is less than \$75,000, the fee for all of the actions is \$4,300.³

Multiple actions taken under a single agreement can be submitted under a single application through the Foreign Investment Portal. There may be delays and errors in fee estimates if notices for multiple actions given under one application in the Portal are not covered by a single agreement.

³ See subsection 53(2) of the Fees Regulations.

Working out the fee for actions covered by a single agreement

Fees if all actions are of the same kind

Where a single agreement covers multiple actions of the same kind, the fee is worked out:

- by treating all actions of a particular kind as a single action of that kind, and
- as if the consideration for that action is equal to the sum of the value of the consideration for all of the actions of that kind.

The kinds of actions that are grouped together are set out in subsection 50(2) of the Fees Regulations.

If any of the actions covered by the agreement are reviewable national security actions, the fee for those actions is worked out separately to all of the other actions.⁴

Example 6 – single agreement involving multiple actions of the same kind (land)

An investor enters into a single agreement to acquire an agricultural property worth \$12 million. The investor already owns other agricultural land in Australia worth more than \$10 million. The property is split across six titles. The acquisition of each title is considered a separate action. Each title is valued at \$2 million.

The fee is calculated by using the aggregate consideration for all of the actions (\$12 million). The fee is \$147,500.

Example 7 – single agreement involving multiple actions of the same kind (business)

A foreign person proposes to acquire shares in two entities and the assets of a separate business under a single agreement. The total value of consideration for these actions under the single agreement is \$150 million. Since all of these actions are business actions, the fee for these actions is \$59,000.

⁴ See subsection 50(1) of the Fees Regulations.

Example 8 – single agreement involving multiple actions of the same kind (land), including some actions that are reviewable national security actions

A foreign person proposes to acquire two commercial land titles under a single agreement. The acquisition of one of the titles is a reviewable national security action and the acquisition of the other title is a significant and notifiable action. Both titles are valued at \$100 million each. The fee for the actions covered under the agreement would be equal to the sum of the fee for the single commercial land title that is a reviewable national security action (i.e. \$7,375) and the fee for a commercial land title that is a notifiable action (i.e. \$29,500). Summing these individual fees together, the total fee for this agreement is \$36,875.

Example 9 – single agreement involving multiple actions of the same kind (entities), including some actions that are reviewable national security actions

A foreign person proposes to acquire interests in securities in 10 entities under a single agreement for \$100 million (apportioned equally across all entities).

Four of these acquisitions will be significant actions, notifiable actions, or notifiable national security actions. The fee for giving notice of these actions is the same as the fee for giving notice of a single action to acquire securities in an entity for \$40 million (which is \$14,700).

The remaining six acquisitions will be reviewable national security actions, and the person decides to give notice of these actions. The fee for giving notice of these actions will be the same as the fee for giving notice of a single reviewable national security action to acquire interests in the securities of an entity for \$60 million (which is \$7,375).

Summing these individual fees together, the total fee for the foreign investment application is \$22,075.

Fees for multiple acquisitions of different kinds of land covered by a single agreement (the dominant land test)

A single agreement may cover multiple acquisitions of Australian land of different kinds, such as an acquisition of a farm (agricultural land) and an adjacent dwelling (residential land). The total fee payable for land actions taken under a single agreement is worked out by determining the dominant kind of relevant land, and treating all the land actions as if they were a single acquisition of an interest in the dominant kind of land with consideration equal to the aggregate consideration for all the land actions.⁵ This method is called the dominant land test.

When using the dominant land test, it may be necessary to consider whether the [dominant land holding rule](#) applies to any of the actions covered by the agreement.

⁵ See section 51 of the Fees Regulations.

How to work out the fee according to the dominant land test

Determine the aggregate consideration for actions covered by the agreement which are acquisitions of interests in the following kinds of land:

- agricultural land
- commercial land, mining or production tenements, or exploration tenements
- residential land.

When determining the aggregate consideration for actions covered by the agreement in these categories:

- Treat mixed-use land as the kind of land which would result in the highest fee.
- Treat an interest in a land entity according to the [dominant land holding rule](#).
- If it is not possible to determine the aggregate consideration for each kind of land covered by the agreement (for example, because the purchase price is not broken down in the contract), apportion the total consideration to each kind of land according to a reasonable assessment of the total value of the interests in each of those kinds of land.⁶

The kind of land with the highest consideration is the dominant kind of land.

If the dominant kind of land is agricultural land or commercial land, then the fee for the actions covered by the agreement is what the fee would be if all of the land actions covered by the agreement were a single acquisition of an interest in the dominant kind of land with consideration equal to the aggregate consideration for all the land actions.

If the dominant kind of land is residential land and none of the actions covered by the agreement is an acquisition of an interest in residential land (established dwellings), then the fee for the actions covered by the agreement is equal to what the fee would be for all of the land actions if they were a single acquisition of an interest in residential land (no established dwellings) with consideration equal to the aggregate consideration for all the land actions.

If the dominant kind of land is residential land and one or more of the actions covered by the agreement is an acquisition of an interest in residential land (established dwellings), then the fee for the actions covered by the agreement is equal to the lesser of:

- the sum of what the fee would be for the residential land (established dwellings) actions if they were a single acquisition of an interest in residential land (established dwellings) with consideration equal to the aggregate consideration for all the residential land (established dwellings) actions and what the fee would be for all the other land actions if they were a single acquisition of an interest in residential land (no established dwellings) with consideration equal to the aggregate consideration for all the other land actions, and
- the maximum fee for the agreement (worked out using the adjusted maximum fee method).

⁶ If you do this, you should provide documentation showing the basis on which this assessment was conducted in your application.

Example 10 – single agreement involving multiple land actions (agricultural and commercial land)

A foreign person proposes to take two land actions that are notifiable actions under a single agreement. The person proposes to acquire agricultural land for \$4 million and commercial land for \$180 million, for total consideration of \$184 million.

The dominant kind of land is commercial land, because it has the highest consideration. The fee is what the fee would be for an application to acquire commercial land for \$184 million, which is \$88,500.

Example 11 – single agreement involving multiple land actions (commercial land and land entity) and securities

A foreign person proposes to take three actions under a single agreement. The person proposes to acquire a 100 per cent interest in a land entity⁷ (51 per cent of the total assets of which are interests in commercial land) for \$40 million, commercial land for \$5 million, and a 100 per cent interest in an entity that is not a land entity for \$15 million.

For fee purposes, the acquisition of the land entity is treated as an acquisition of an interest in commercial 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 for \$45 million (\$14,700). This fee amount is added to the fee for the action to acquire the entity which is not a land entity (also \$14,700). The total fee payable is \$29,400.

Example 12 – single agreement involving multiple land actions (residential and commercial land)

A foreign person proposes to take three land actions that are notifiable actions under a single agreement. The person proposes to acquire residential land (established dwellings) for \$1 million, residential land (no established dwellings) for \$5 million, and commercial land for \$5 million, for total consideration of \$11 million.

The dominant kind of land is residential land, because it has the highest total consideration of \$6 million. The fee is the sum of:

- \$44,100 for the residential land (established dwellings)
- \$118,000 for the residential land (no established dwellings)
- \$14,700 for the commercial land

which is \$176,800.

⁷ See section 13 of the *Foreign Acquisitions and Takeovers Regulation 2015* (the **Regulation**).

Fee for multiple actions of different kinds covered by a single agreement

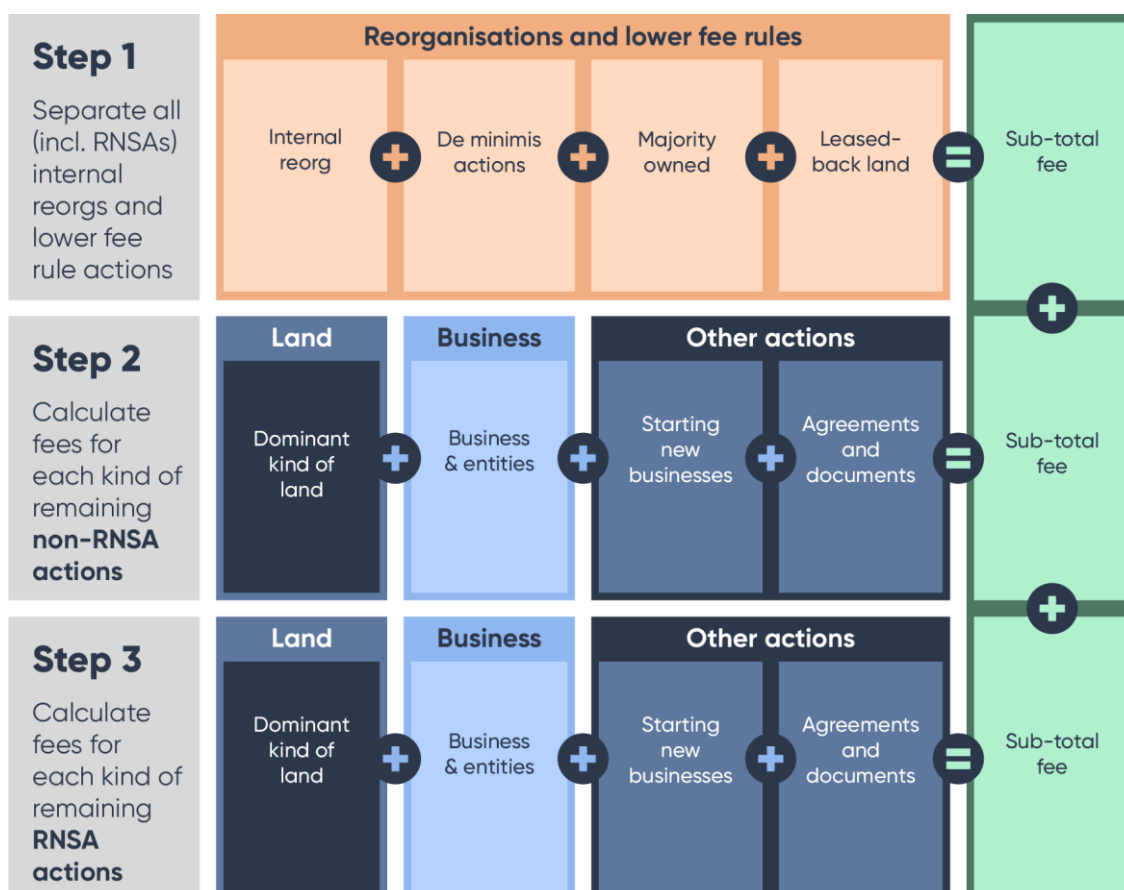
A single agreement can cover multiple actions of different kinds. For example, a foreign person which has acquired the assets of an Australian business may need to enter a new lease over the business premises. These actions might be covered by a single agreement.

The fee for the vast majority of these applications is simple to calculate. The legislation provides methods for working out the fee for more complicated transactions, and generally, the fee payable for the more complicated agreements is the sum of the fees for each of the different kinds of actions covered under the agreement.

Fees for reviewable national security actions are calculated separately to other fees. This is because fees for reviewable national security actions are 25 per cent of the fees for equivalent notifiable actions.

The following diagram and process map can be followed to determine the correct fee. Each action taken under the agreement will only be considered as one kind of action (if necessary, determining that kind of action under [“Fee when a single action is covered by two or more provisions of the Act”](#)).⁸

Figure 1 – determining the fee for multiple actions covered under a single agreement



⁸ See sections 49 to 52 of the Fees Regulations.

The fee for actions covered by a single agreement is the sum of any of the following kinds of actions in Tables 2 and 3 covered by the agreement.

Table 2: Determining the fee for multiple actions covered under a single agreement (except for residential land (established dwellings))

If, under a single agreement, there are one or more actions that...	The fee for the action(s) is equal to...
constitute an internal reorganisation	\$7,375 if all actions are RNSAs; \$29,500 otherwise
meet the de minimis rule	\$1,075 if all actions are RNSAs; \$4,300 otherwise
meet the majority owner rule	\$1,075 if all actions are RNSAs; \$4,300 otherwise
meet the leasehold buyback rule	\$1,075 if all actions are RNSAs; \$4,300 otherwise
are to acquire an interest in Australian land or tenements	The sum of the fees worked out under the dominant land test separately for the RNSAs and the non-RNSAs
are to acquire an interest in entities, businesses or assets of a business (excluding land and land entities)	The sum of the fees worked out under multiple actions of the same kind separately for the RNSAs and the non-RNSAs
are to start new Australian businesses	The sum of \$1,075 for any relevant RNSAs, and \$4,300 for any relevant non-RNSAs
are to enter or terminate agreements or alter documents	The sum of \$7,375 for any relevant RNSAs, and \$29,500 for any relevant non-RNSAs

Table 3: Determining the fee for multiple actions covered under a single agreement (for residential land (established dwellings))

If, under a single agreement, there are one or more actions that...	The fee for the action(s) is equal to...
meet the de minimis rule	\$3,225 if all actions are RNSAs; \$12,900 otherwise
meet the majority owner rule	\$1,075 if all actions are RNSAs; \$4,300 otherwise
meet the leasehold buyback rule	\$1,075 if all actions are RNSAs; \$4,300 otherwise
are to acquire an interest in Australian land or tenements	The sum of the fees worked out under the dominant land test separately for the RNSAs and the non-RNSAs

C: Adjusting fees and lower fee rules

De minimis rule

If the consideration for an action is less than \$75,000 and:

- the action is not a residential land (established dwellings) action or a reviewable national security action—the fee is \$4,300.
- the action is not a residential land (established dwellings) action but is a reviewable national security action—the fee is \$1,075.
- the action is a residential land (established dwellings) action but is not a reviewable national security action—the fee is \$12,900.
- the action is a residential land (established dwellings) action and a reviewable national security action—the fee is \$3,225.⁹

Example 13

A foreign person proposes to acquire an easement over commercial land for \$65,000. The fee for the application is \$4,300.

If a [single agreement](#) covers multiple actions for which the consideration is less than \$75,000, then only one fee is payable for those actions.¹⁰

Example 14

A foreign person proposes to acquire leasehold interests in 5 titles of commercial land under a single agreement. The consideration payable for each title is \$72,500. The fee for the application is \$4,300.

Majority owner rule

If a foreign person already holds an interest of more than 50 per cent in Australian land, a tenement, securities in an entity, or assets of an Australian business and acquires an additional interest in the land, tenement, entity, or assets, the fee is \$4,300. If the action is a reviewable national security action, the fee is \$1,075.¹¹

⁹ See section 53 of the Fees Regulations.

¹⁰ See subsection 53(2) of the Fees Regulations.

¹¹ See section 54 of the Fees Regulations.

Example 15

A foreign person holds a 60 per cent interest in the assets of an Australian business and proposes to acquire additional interests in its assets. The applicable threshold tests are met for the acquisition of an interest in the assets of a business. As the foreign person already holds an interest of more than 50 per cent in that business, the majority owner rule would apply and adjust the applicable fee to \$4,300.

If a [single agreement](#) covers multiple actions and the majority owner rule applies to one or more of those actions, only one fee is payable for the actions that meet the majority owner rule.¹² In this situation, the fee for those actions is \$4,300, unless all the actions are reviewable national security actions, in which case the fee is \$1,075.

The majority owner rule does not apply if the action is an [internal reorganisation](#) or if the action meets the [de minimis rule](#).¹³ Similarly, the majority owner rule does not apply if an agreement entered into gives rise to a new interest—for example, if a foreign person materially alters or varies a leasehold interest to increase the term of the lease or to expand the land covered by the lease. However, if the foreign person is increasing their interest in a lease by buying out an interest in the lease held by another party, the majority owner rule could apply.

Leasehold buyback rule

The leasehold buyback rule applies if:

- a foreign person holds a legal interest in Australian land
- the person proposes to sell the interest to another person (the purchaser), and
- the person proposes to acquire a leasehold interest in the land from the purchaser.¹⁴

If the leasehold buyback rule applies and:

- the action is not a reviewable national security action—the fee is \$4,300
- the action is a reviewable national security action—the fee is \$1,075.

¹² See subsection 54(3) of the Fees Regulations.

¹³ See subsection 54(5) of the Fees Regulations.

¹⁴ See section 55 of the Fees Regulations.

Example 16

A foreign person proposes to sell agricultural land to another person for \$10 million, subject to the condition that the foreign person is permitted to lease the farm for 10 years. Since the foreign person holds the legal interest in the land and proposes to acquire a leasehold interest in the land from the purchaser, the fee for the application is \$4,300.

If a [single agreement](#) covers multiple actions and the leasehold buyback rule applies to one or more of those actions, only one fee is payable for the actions that meet the leasehold buyback rule.¹⁵ In this situation, the fee for those actions is \$4,300, unless all the actions are reviewable national security actions, in which case the fee is \$1,075.

The leasehold buyback rule does not apply if the action is an [internal reorganisation](#), if the [de minimis rule](#) applies, or if the [majority owner rule](#) applies.¹⁶

Example 17

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 owner rule, and the third action satisfies the leasehold buyback rule set out in this section. A single fee of \$4,300 is payable in relation to the first two actions as both actions satisfy the de minimis rule. A fee is not payable for these same actions under the majority owner rule. A fee of \$4,300 is payable for the third action under the leasehold buyback rule. The total fee for the three actions is \$8,600.

Joint tenants rule

Joint tenants are two or more persons that hold property jointly so that each owns an undivided share of the whole.

If two or more persons acquire or propose to acquire an interest in a security, asset, tenement, trust or Australian land as joint tenants, then generally only one fee for the acquisition will be payable.¹⁷ Each joint tenant is liable to pay the full amount of the 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 of the fee, there is no remaining liability for the other joint tenants.

¹⁵ See subsection 55(3) of the Fees Regulations.

¹⁶ See subsection 55(5) of the Fees Regulations.

¹⁷ See section 57 of the Fees Regulations.



Example 18

Two joint tenants acquire an interest in residential land (no established dwellings) for \$2 million and therefore are liable to pay a fee of \$29,500. After the first joint tenant pays \$20,000, both joint tenants are liable to pay the remaining \$9,500.

Tenants in common rule

Tenants in common are persons who hold property in common with another person or persons so that each has a percentage of the interest in the whole property.

If you acquire or propose to acquire an interest in a security, asset, tenement, trust or Australian land as a tenant in common, then the fee is proportional to your share of the interest in the security, asset, tenement, trust, or Australian land.¹⁸

Example 19

Two foreign persons propose to acquire an interest in agricultural land for \$2 million as tenants in common. The first tenant is to have an 80 per cent interest and the second tenant is to have a 20 per cent interest.

The total fee is \$14,700. The fee for the first tenant is 80 per cent of this amount (\$11,760) and the fee for the second tenant is 20 per cent of this amount (\$2,940).

Dominant land holding rule

Land entities are certain corporations and trusts whose interests in Australian land are more than 50 per cent of total assets by value.¹⁹ For more information on land entities, see the *Business Guidance Note*. An acquisition of securities in a land entity may give rise to multiple actions, such as a notifiable action which is an acquisition of an interest in Australian land and a notifiable action which is an acquisition of a substantial interest in an Australian entity.

For the purposes of working out fees, an action which is an acquisition of securities in a land entity is treated as an interest in Australian land of the same kind as the entity's dominant land holding, rather than as an interest in the entity.²⁰

How to work out the dominant land holding of a land entity

Step 1: Identify all the kinds of relevant land in which the entity holds an interest at the time of the acquisition.

There are three kinds of land: agricultural land, commercial land (which includes tenements), and residential land. Treat mixed-use land as the kind of land which would result in the highest fee.

Step 2: Make a reasonable assessment of the total value of the interests in each of those kinds of land.

Step 3: The kind of land with the highest total value is the dominant land holding.

¹⁸ See section 57 of the Fees Regulations.

¹⁹ See sections 5 and 13 of the Regulation.

²⁰ See section 56 of the Fees Regulations.

Example 20

A foreign person proposes to acquire 20 per cent of the issued securities in a land entity for \$50 million. A reasonable assessment of total value of the entity's interests in 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 land with the highest total value, commercial land is the dominant land holding of the entity. Therefore, the acquisition of the securities in the land entity would be treated as an acquisition of commercial land for consideration of \$50 million (being the consideration for the actual transaction). The fee is \$14,700.

If an acquisition of an interest in a land entity is covered by a single agreement, the dominant land holding may be a relevant input into the dominant land test. For more information, see [Fees for multiple acquisitions of different kinds of land \(the dominant land test\)](#).

Subdivision and amalgamation of land

The subdivision or amalgamation of land generally results in the extinguishment of the old title and the creation of a new title or titles, resulting in an acquisition of a new interest in Australian land that can constitute a significant and notifiable action under the Act.

If you already own land immediately prior to subdivision or amalgamation, no consideration is attributable to the subdivision or amalgamation. This means:

- a proposed subdivision or amalgamation does not increase the fee for a foreign investment application which also relates to another action
- the [de minimis rule](#) applies to foreign investment applications which only relate to subdivisions or amalgamations (because the consideration for the acquisition is less than \$75,000)
- a subdivision or amalgamation does not use any part of the financial limit permitted by an exemption certificate.

Example 21

A foreign person proposes to acquire agricultural land for \$8 million and then subdivide the land. The fee is \$88,500, which is the same as the fee would have been if the foreign person had not proposed to subdivide the land.



Example 22

A foreign person holds agricultural land and proposes to subdivide the land. The fee is \$4,300.

For more information about the subdivision and amalgamation of land, see the *Key Concepts* Guidance Note.

D: Fees for exemption certificates

There are three types of exemption certificates:

- **General exemption certificates**, which allow foreign persons to undertake programs of acquisitions without making separate foreign investment applications for each acquisition.
- **Passive foreign government investor exemption certificates**, which allow passive foreign government investors access to the higher monetary thresholds that apply to private foreign investors under certain conditions.
- **Residential exemption certificates**, which allow foreign persons to acquire a residential property or property developers (including Australian property developers) to sell certain dwellings to foreign persons.

You can find more information about exemption certificates in the *Exemption Certificates* Guidance Note.

General exemption certificates

General exemption certificates allow foreign persons to undertake programs of acquisitions without making separate foreign investment applications for each acquisition. General exemption certificates can cover:

- interests in businesses or entities²¹
- interests in Australian land²²
- interests in tenements and mining, production or exploration entities²³
- notifiable national security actions²⁴
- reviewable national security actions.²⁵

If you apply for an exemption certificate which only covers one of these categories of interests or actions, the fee will depend on the requested financial limit and the kinds of actions that the exemption certificate covers.

If you apply for one or more exemption certificates which cover more than one of these categories of interests or actions in a single application, the fee will depend on the total requested financial limit across all the certificates and the kinds of actions that the exemption certificates cover.

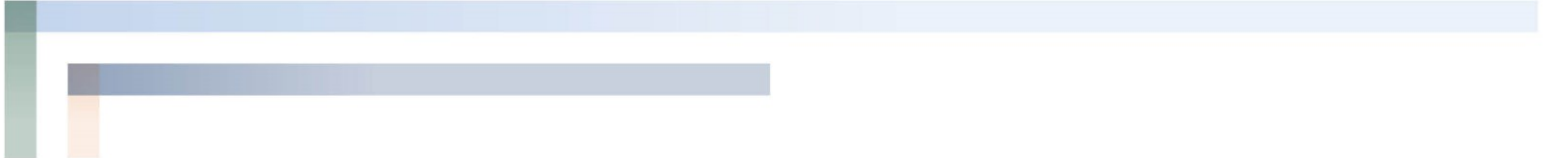
²¹ See section 42 of the Regulation.

²² See section 58 of the Act.

²³ See section 43 of the Regulation.

²⁴ See section 43BA of the Regulation.

²⁵ See section 43BB of the Regulation.



In general, fees for exemption certificates are calculated by separating the total requested financial limit of the certificates into four categories:

- the total requested financial limit for residential land (no established dwellings)
- the total requested financial limit for residential land (established dwellings)
- the total requested financial limit for agricultural land, and
- the total requested financial limit for commercial land, tenements, businesses, and entities.

General exemption certificate application fee discounts

The fee for an application for a general exemption certificate is usually 75 per cent of the sum of the fees for each category, calculated as if there were a single notifiable action of that kind for consideration equal to the total requested financial limit for that category.²⁶ However, if the actions to be covered by the certificate are all reviewable national security actions, the fee is 25 per cent of the fee for an equivalent notifiable action.²⁷

Fees for certain actions

Separate fees apply to certain actions which are proposed to be taken under an exemption certificate.

If the exemption certificate covers actions which involve starting a national security business²⁸ or actions which involve starting an Australian business,²⁹ the fee for each action is 75 per cent of the fee for these actions, which is \$3,225 (or, if the action is a reviewable national security action, 25 per cent of the fee, which is \$1,075).

If the exemption certificate covers reviewable national security actions which involve entering an agreement,³⁰ altering a constituent document of an entity,³¹ or entering or terminating a significant agreement with an Australian business,³² the fee for each action is \$7,375.

Fees for these actions are calculated separately to the fees calculated for the total requested financial limit of the exemption certificate (as separated into the categories above).³³

²⁶ See section 33 of the Fees Regulations.

²⁷ See section 33 of the Fees Regulations.

²⁸ See section 55B of the Act.

²⁹ See section 56 of the Regulation.

³⁰ See section 55D of the Act.

³¹ See section 55D of the Act.

³² See section 55E of the Act.

³³ See section 33 of the Fees Regulations.

Example 23 – exemption certificate covering certain actions

A foreign person who is not a foreign government investor applies for an exemption certificate under section 43BB of the Regulation (actions that would otherwise be RNSAs). The person proposes to acquire an interest in developed commercial land which is not national security land for up to \$3 million, and to start an Australian business which will not be a national security business.

The part of the fee which is attributable to the proposed acquisition of an interest in developed commercial land is \$3,675 (after an exemption certificate application fee discount for an RNSA is applied). The part of the fee which is attributable to the proposed starting of an Australian business is \$1,075 (after the discount for an RNSA is applied). The fee for the application is \$4,750.

Example 24 – land exemption certificate

A foreign person applies for an exemption certificate under section 58 of the Act to undertake a program of acquisitions of interests in Australian land. The person proposes to acquire up to:

- \$10 million in residential land (established dwellings)
- \$10 million in residential land (no established dwellings)
- \$15 million in agricultural land
- \$75 million in commercial land
- \$50 million in mining tenements.

The sum of the fees for each of these categories is \$1.3275 million, calculated as follows:

- \$10 million in residential land (established dwellings) (\$796,500)
- \$10 million in residential land (no established dwellings) (\$265,500)
- \$15 million in agricultural land (\$206,500)
- \$125 million in commercial land, tenements, businesses, and entities (\$59,000).

The fee is 75 per cent of this amount—\$995,625.

Example 25 – reviewable national security action exemption certificate

A foreign person applies for a reviewable national security exemption certificate to acquire interests in securities in entities in the manufacturing sector, which are reviewable national security actions. The person proposes to acquire the interests for up to \$80 million in total.

The fee is 25 per cent of the fee for a notifiable action to acquire interests in securities in an entity for \$80 million. That is, the fee is 25 per cent of \$29,500, which is \$7,375.

Multiple general exemption certificate applications at the same time or within 14 days of one another

If you apply for more than one general exemption certificate at the same time or within 14 days of one another, the fee for the applications is worked out as if they were an application for a single general exemption certificate.³⁴ To avoid delays, you should submit multiple applications at the same time if possible.

Example 26 – multiple applications for certificates covering reviewable national security actions and other kinds of actions

A foreign person applies for a reviewable national security exemption certificate to acquire interests in securities in entities in the software sector for up to \$10 million. The actions to be covered by the certificate are all reviewable national security actions.

At the same time, the person also applies for an exemption certificate under section 58 of the Act to acquire interests in commercial land for up to \$5 million. All of the actions to be covered by the certificate are significant and notifiable actions.

The fee for both certificates is worked out as if the applications were an application for a single certificate. In this case, because the actions to be covered by both certificates are not all reviewable national security actions, and fees for acquisitions of interests in entities are calculated as if the acquisition was an action for the acquisition of an interest in commercial land,³⁵ the fee is 75 per cent of the fee for an action to acquire an interest in commercial land with a consideration value equal to the sum of the consideration value of all actions to be covered by the exemption certificates (\$15 million). This means that the fee is 75 per cent of \$14,700, which is \$11,025.

³⁴ See section 35 of the Fees Regulations.

³⁵ See item 3 of the table in subsection 33(3) of the Fees Regulations.

Example 27 – multiple applications for exemption certificates covering reviewable national security actions and other kinds of actions with a combined financial limit

A foreign person applies for an exemption certificate under section 58 of the Act to acquire interests in commercial land for up to \$70 million. All of the actions to be covered by the certificate are significant and notifiable actions.

At the same time, the person also applies for a reviewable national security exemption certificate to acquire interests in agricultural land for up to \$30 million. All of the actions to be covered by the certificate are reviewable national security actions.

The person requests an overall combined financial limit for both certificates of \$90 million.

Because the actions to be covered by both certificates are not all reviewable national security actions, the fee is 75 per cent of the sum of the fee for an action to acquire an interest in commercial land for \$70 million (\$29,500) and the fee for an action to acquire an interest in agricultural land for \$30 million (\$413,000)—that is, the fee is 75 per cent of \$442,500, which is \$331,875. The combined financial limit of \$90 million does not change this calculation.

Maximum fees for general exemption certificates

Maximum fees apply to applications for general exemption certificates. For more information, see [Maximum fees](#).

Passive foreign government investor exemption certificates

A flat fee of \$117,000 applies for applications for passive foreign government investor exemption certificates.

For more information about passive foreign government investor exemption certificates, see the Passive foreign government investors section in the *Exemption Certificates* Guidance Note.

Residential exemption certificates

Residential exemption certificates include:

- new dwelling exemption certificates³⁶
- near-new dwelling exemption certificates³⁷
- established dwelling exemption certificates³⁸
- residential land (other than established dwellings) exemption certificates.³⁹

The below table provides information about fees for each type of residential exemption certificate.

Table 4: types of residential exemption certificates

Type of exemption certificate	Fee
New dwelling	\$63,400 application fee plus 6-monthly reconciliation fee based on the number of, and consideration payable for, dwellings acquired by foreign persons
Near-new dwelling	
Established dwelling	Ordinary fee for acquiring an interest in residential land (established dwellings)
Residential land (other than established dwellings)	Ordinary fee for acquiring an interest in residential land (no established dwellings)

New dwelling and near-new dwelling exemption certificates

You can apply for an exemption certificate to sell new or near-new dwellings in a development to foreign persons without each foreign purchaser being required to seek approval. For more information, see the *Residential Land and Exemption Certificates* Guidance Notes.

The initial fee for a new or near-new dwelling exemption certificate is \$63,400.⁴⁰ The initial fee for a near-new dwelling exemption certificate is nil if you have applied for, or been given, a new dwelling exemption certificate and both exemption certificates cover (or will cover) interests in relation to the same development.⁴¹

³⁶ See section 57 of the Act.

³⁷ See section 43A of the Regulation.

³⁸ See section 59 of the Act.

³⁹ See section 43B of the Regulation.

⁴⁰ See sections 30 and 31 of the Fees Regulations.

⁴¹ See subsection 31(2) of the Fees Regulations.

Example 28—application for near-new dwelling exemption certificate after receiving new dwelling exemption certificate

A property developer has already obtained an exemption certificate to sell new dwellings in a city development. As some of the apartments are considered near-new dwellings, the property developer subsequently applies for a near-new dwelling certificate. The fee for the near-dwelling certificate would be nil as both exemption certificates relate to the same development.

Reconciliation fees are also payable every six months for each new or near-new dwelling acquired under the certificate by foreign persons. The amount of the reconciliation fee for each dwelling acquired by a foreign person is the amount that would have been payable if the foreign persons sought approval individually. Reconciliation fees are payable by the developer on a six-monthly basis based on the number of acquisitions made under the exemption certificate over the previous six months. This period is called the reconciliation period.

Example 29—reconciliation fees for new dwelling exemption certificate

A property developer wants to obtain an exemption certificate to sell new dwellings in its multi-storey residential development to foreign persons. The developer applies for the exemption certificate and pays the initial fee of \$63,400. The exemption certificate is granted and foreign persons acquire four new dwellings in the following six months. Three new dwellings are each purchased for \$600,000 and one new dwelling is purchased for \$1.2 million.

For the reconciliation period, the developer pays \$14,700 for each new dwelling acquired by a foreign person valued at \$1 million or less and pays \$29,500 for the new dwelling acquired for \$1.2 million. The total reconciliation fee is \$73,600.

Exemption certificates - established dwelling and residential land (other than established dwellings)

You can apply for an exemption certificate to acquire an interest in any established dwelling. These certificates are called established dwelling exemption certificates. For more information, see the *Exemption Certificates* Guidance Note.

You can also apply for an exemption certificate to acquire an interest in residential land other than established dwellings. These certificates are called residential land (other than established dwellings) exemption certificates. For more information, see the *Exemption Certificates* Guidance Note.

The application fee for established dwelling exemption certificates and residential land (other than established dwellings) exemption certificates is the same as the fee that would be payable for an acquisition of residential land of that kind not made under an exemption certificate.⁴²

⁴² See section 32 of the Fees Regulations.

Example 30—application for established dwelling exemption certificate

A foreign-owned company which employs workers under the Pacific Australia Labour Mobility scheme seeks to acquire an established dwelling to house those workers.

Since many established dwellings sell at auction, the company applies for an established dwelling exemption certificate to acquire an established dwelling for up to \$1 million. The fee for the exemption certificate is \$44,100.

If you apply for a residential land (other than established dwellings) exemption certificate (the first certificate) and then apply for an established dwelling exemption certificate (or vice versa) before having taken an action covered by the first certificate, the fee for the second certificate is the amount of the difference between the fee for the first certificate and the fee for the second certificate. If the fee for the first certificate was higher than the fee for the second certificate, the fee for the second certificate is nil.⁴³

Example 31—application for established dwellings exemption certificate after application for residential land (other than established dwellings) exemption certificate

A foreign person applied for a residential land (other than established dwellings) exemption certificate which covers \$2 million of residential land (other than established dwellings) (the first certificate). The fee for the application was \$29,500.

Before taking an action covered by first certificate, the person applies for an established dwellings exemption certificate which covers \$2 million of residential land (established dwellings) (the second certificate). The fee for the application would usually be \$88,500.

The fee for the second certificate is reduced by the amount of the fee for the first certificate. The fee for the second certificate is \$59,000.

Maximum fees for residential exemption certificates

Maximum fees apply to applications for residential exemption certificates. For more information, see [Maximum fees](#).

⁴³ See section 34 of the Fees Regulations.

E: Fees for disclosures of actions already taken

If you have taken an action under the Act but the action was not covered by a no objection notification or exemption certificate, you can apply for retrospective approval of that acquisition.

You can make a disclosure of actions already taken through the [ATO website](#) (for residential land applications) or the Foreign Investment Portal (for all other applications). You are required to pay a fee for most disclosures of actions already taken.

Fees for disclosures of actions already taken are worked out as if the action had been taken at the time the Treasurer gives an order or no objection notification, and are due before the end of 30 days after the order or notification is given. The fee is usually the same as the fee that would be payable if the action is taken on the date the disclosure is submitted. This means that fees for disclosures of actions already taken can be different to what the fee would have been if an application was made before the action was taken.

Example 32—disclosures of actions already taken

A foreign person took a significant and notifiable action by acquiring a 20 per cent interest in an Australian entity in 2023 and did not notify the Treasurer before taking the action. The consideration for the acquisition was \$5 million. The foreign person realises they breached the Act and submits a disclosure of actions already taken in August 2024. The Treasurer issues a no objection notification in relation to the action in September 2024. The fee for the disclosure of actions already taken is calculated as if the action had been taken at the time of the Treasurer's approval (that is, September 2024).

F: Fees for variations

If you have received a no objection notification, notice imposing conditions, or an exemption certificate, you can apply for a variation to the notice or certificate, including to conditions it imposes. For information on whether a variation or new application is appropriate, please see the *Key Concepts* Guidance Note.

You are required to pay a fee for variation applications. The amount of the fee depends on the materiality of the variation. To avoid delays in processing a variation, you should ensure the correct fee is paid.

If the variation is not of an immaterial or minor nature (called a standard variation), the fee is \$29,500. Most variations are standard variations.

If the variation is of an immaterial or minor nature, the fee is \$4,300.

However, fees for variation applications are capped at the amount of the fee for the initial notification or certificate.

Example 33 – variation of a no objection notification for residential land

A foreign person gives the Treasurer notice in September 2020 of a proposed acquisition of an established dwelling for consideration of \$1 million and is given a no objection notification. The applicable fee at the time was \$5,800. In August 2024, the person applies to vary the no objection notification.

The fee for the variation application would usually be \$29,500. However, since the fee for the original foreign investment application was \$5,800, the fee payable for the variation application is \$5,800.

Determining the materiality of the variation

A request for a variation that is not of an immaterial or minor nature includes:

- changing or removing a condition
- extending the validity period of the no objection notification or exemption certificate, and
- adding a new wholly -owned subsidiary as an investor.

A request for a variation that is of an immaterial or minor nature includes:

- fixing a typographical error, and
- fixing an error in the name of the acquirer, target, or property being acquired.

G: Vacancy fees

You might be required to pay a fee (called a vacancy fee) if:

- you are a foreign person
- you have acquired a dwelling
- the dwelling is occupied for fewer than 183 days in a given year (called a vacancy year).⁴⁴

If you are a foreign person who owns a dwelling in Australia, you must lodge a vacancy fee return with the ATO every year within 30 days of the end of each vacancy year. If you do not lodge a vacancy fee return in time, you will be required to pay the vacancy fee even if your dwelling was occupied for more than 183 days in the vacancy year.

More information about vacancy fees can be found in the *Residential Land* Guidance Note and on [the ATO website](#).

Amount of the vacancy fee

The ATO will tell you how much you need to pay after you lodge a vacancy fee return. The amount of the vacancy fee is usually:

- for vacancy years starting on or after 9 April 2024—double the amount of the original application fee that you paid before you acquired the dwelling, or
- for vacancy years starting before 9 April 2024—the amount of the original application fee that you paid before you acquired the dwelling.⁴⁵

If the original application fee was waived, the amount of the vacancy fee is usually \$29,400.⁴⁶

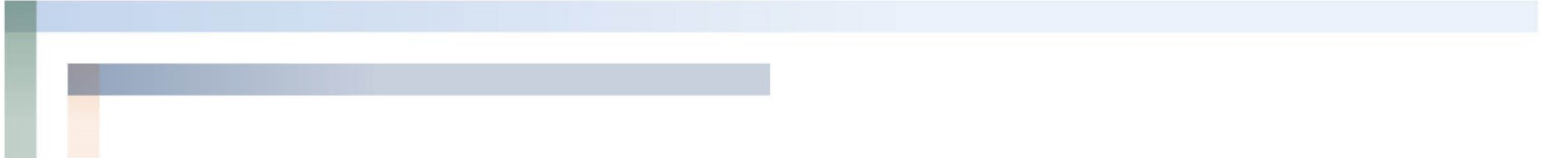
Example 34—vacancy fee

A foreign person purchases an established residential property on 2 July 2024 for \$1.5 million. The application fee was \$88,500. The property settles on 15 August 2024. The property was occupied or available for rent between 15 August 2024 and 1 November 2024, but not between 2 November 2024 and 14 August 2025 (which is more than 183 days). The vacancy fee is \$177,000.

⁴⁴ See Part 6A of the Act.

⁴⁵ See subsection 67(2) of the Fees Regulations.

⁴⁶ See Part 3 of the Fees Regulations.



However, if the dwelling was covered by a new dwelling exemption certificate or a near-new dwelling exemption certificate, the amount of the vacancy fee is equal to:

- for vacancy years starting on or after 9 April 2024—double the amount of the application fee that you would have had to pay if the dwelling was not covered by an exemption certificate, or
- for vacancy years starting before 9 April 2024—the amount of the application fee that you would have had to pay if the dwelling was not covered by an exemption certificate.⁴⁷

⁴⁷ See subsection 67(2) of the Fees Regulations.

H: Determining the kind of action

In order to calculate the fee for an application it is important to understand the consideration and type or kind of action taking place. In general, the fee framework differentiates between particular actions under the Act (that is, significant actions, notifiable actions, notifiable national security actions, and reviewable national security actions) depending on whether the application is of a kind that relates to:

- residential land
- agricultural land
- commercial land, tenements, businesses, or entities
- starting a new business
- entering an agreement or altering a document, or
- an internal reorganisation.

These are umbrella terms and capture a range of actions under the Act. The following tables may be used to help determine the kind of action taken.

Actions relating to residential land	
Significant, notifiable, or notifiable national security actions	
<i>Acquiring an interest in residential land</i>	Section 4 of the Act (definition of <i>residential land</i>) Section 43 of the Act Paragraph 47(2)(c) of the Act
<i>Acquiring an interest in Australian land that is both national security land and residential land</i>	Section 43 of the Act Paragraph 47(2)(c) of the Act Paragraph 55B(1)(d) of the Act Section 5 of the Regulation (definition of <i>national security land</i>)
Reviewable national security actions	
<i>Acquiring an interest in residential land</i>	Section 4 of the Act (definition of <i>residential land</i>) Section 55F of the Act Subsection 17(1) of the Fees Regulations, table items 3 and 3A

Agricultural land	
Significant, notifiable, or notifiable national security actions	
<i>Acquiring an interest in agricultural land</i>	Section 43 of the Act Paragraph 47(2)(c) of the Act
<i>Acquiring an interest in Australian land that is both national security land and agricultural land</i>	Section 43 of the Act Paragraph 47(2)(c) of the Act Paragraph 55B(1)(d) of the Act Section 5 of the Regulation (meaning of <i>national security land</i>)
Reviewable national security actions	
<i>Acquiring an interest in agricultural land</i>	Section 55F of the Act
Commercial land and tenements	
Significant, notifiable, or notifiable national security actions	
<i>Acquiring an interest in commercial land (whether the land is vacant or not);</i>	Section 43 of the Act Paragraph 47(2)(c) of the Act
<i>Acquiring an interest in a mining or production tenement</i>	Section 43 of the Act Paragraph 47(2)(c) of the Act
<i>FGI acquiring an interest in a tenement or mining, production or exploration tenement entity</i>	Paragraph 56(1)(c) of the Regulation
<i>Acquiring an interest in Australian land that is both national security land and commercial land</i>	Section 43 of the Act Paragraph 47(2)(c) of the Act Paragraph 55B(1)(d) of the Act Section 5 of the Regulation (definition of <i>national security land</i>)
<i>Acquiring an interest in Australian land that is both national security land and a mining or production tenement</i>	Paragraph 55B(1)(d) of the Act Section 5 of the Regulation (definition of <i>national security land</i>)
<i>Acquiring an interest in an exploration tenement that is national security land</i>	Section 5 of the Regulation (definition of <i>national security land</i>)
Reviewable national security actions	
<i>Acquiring an interest in commercial land</i>	Section 43 of the Act Paragraph 47(2)(c) of the Act Section 55F of the Act
<i>Acquiring an interest in mining or production tenements</i>	Section 43 of the Act Paragraph 47(2)(c) of the Act Section 55F of the Act

Businesses and entities	
Significant, notifiable, or notifiable national security actions	
<i>Acquiring an interest in securities of an Australian entity</i>	Paragraph 40(2)(b) of the Act
<i>Acquiring a substantial interest in an entity</i>	Paragraph 47(2)(b) of the Act
<i>Acquiring a direct interest in an Australian entity that is an agribusiness</i>	Paragraph 40(2)(a) of the Act Paragraph 47(2)(a) of the Act
<i>Acquiring a direct interest in an Australian business that is an agribusiness</i>	Paragraph 41(2)(a) of the Act Paragraph 47(2)(a) of the Act
<i>Acquiring an interest in assets of an Australian business</i>	Paragraph 41(2)(b) of the Act
<i>Acquiring a direct interest in an Australian entity or business (FGI)</i>	Paragraph 56(1)(a) of the Regulation
<i>Acquiring a direct interest in an entity or business that wholly or partly carries on an Australian media business</i>	Section 55 of the Regulation
<i>Issuing securities in an entity</i>	Paragraph 40(2)(c) of the Act
<i>Acquiring a direct interest in a national security business</i>	Paragraph 55B(1)(b) of the Act Section 8AA of the Regulation
<i>Acquiring a direct interest in an entity that carries on a national security business</i>	Paragraph 55B(1)(c) of the Act Section 8AA of the Regulation
Reviewable national security actions	
<i>Acquiring an interest in an entity</i>	Paragraph 55D(1)(a) of the Act
<i>Acquiring an interest in an Australian business</i>	Subparagraph 55E(1)(a)(i) of the Act
<i>Acquiring an interest in the assets of an Australian business</i>	Subparagraph 55E(1)(a)(ii) of the Act
<i>Issuing securities in an entity</i>	Paragraph 55D(2)(i) of the Act

Starting a new business	
Significant, notifiable, or notifiable national security actions	
<i>Starting an Australian business (FGI)</i>	Paragraph 56(1)(b) of the Regulation
<i>Starting a national security business</i>	Section 55B of the Act
Reviewable national security actions	
<i>Starting an Australian business</i>	Subsection 55E(2) of the Act
Entering agreements or altering documents	
Significant, notifiable, or notifiable national security actions	
<i>Entering an agreement relating to the affairs of an entity</i>	Paragraph 40(2)(d) of the Act
<i>Altering a constituent document of an entity</i>	Paragraph 40(2)(e) of the Act
<i>Entering or terminating a significant agreement with an Australian business</i>	Paragraph 41(2)(c) of the Act
Reviewable national security actions	
<i>Entering an agreement relating to the affairs of an entity</i>	Paragraph 40(2)(d) of the Act
<i>Altering a constituent document of an entity</i>	Paragraph 40(2)(e) of the Act
<i>Entering or terminating a significant agreement with an Australian business</i>	Paragraph 41(2)(c) of the Act
Internal reorganisations	
Significant, notifiable, or notifiable national security actions	
<i>Any action(s) that constitute an internal reorganisation</i>	Internal reorganisations Section 41 of the Fees Regulations
Reviewable national security actions	
<i>Any action(s) that constitute an internal reorganisation and are reviewable national security actions</i>	Internal reorganisations Section 41 of the Fees Regulations

I: Internal reorganisations

If one or more actions constitute an internal reorganisation, particular fees will apply. For internal reorganisations which include more than one action, only one fee applies in relation to all of the actions that constitute an internal reorganisation. None of the [lower fee rules](#) apply to internal reorganisations (including the majority owner rule).

What is an internal reorganisation?

An internal reorganisation is an acquisition by an entity (the first entity) of:

- an interest in securities in another entity if:
 - both entities are subsidiaries of the same holding entity, or
 - the other entity is a subsidiary of the first entity, or
- an interest in an asset, tenement⁴⁸ or Australian land from another entity if:
 - both entities are subsidiaries of the same holding entity, or
 - the other entity is the holding entity of the first entity, or
 - the other entity is a subsidiary of the first entity.⁴⁹

One or more actions are not an internal reorganisation if:

- the acquisition is made by a foreign person that is not an entity, such as a natural person
- a new entity is included in a corporate group as the parent entity of the group
- the target is not a subsidiary of the same holding entity as the first entity or a subsidiary of the first entity prior to the acquisition by the first entity.

Amounts of fees

The amounts of the fees for internal reorganisations are set out below.

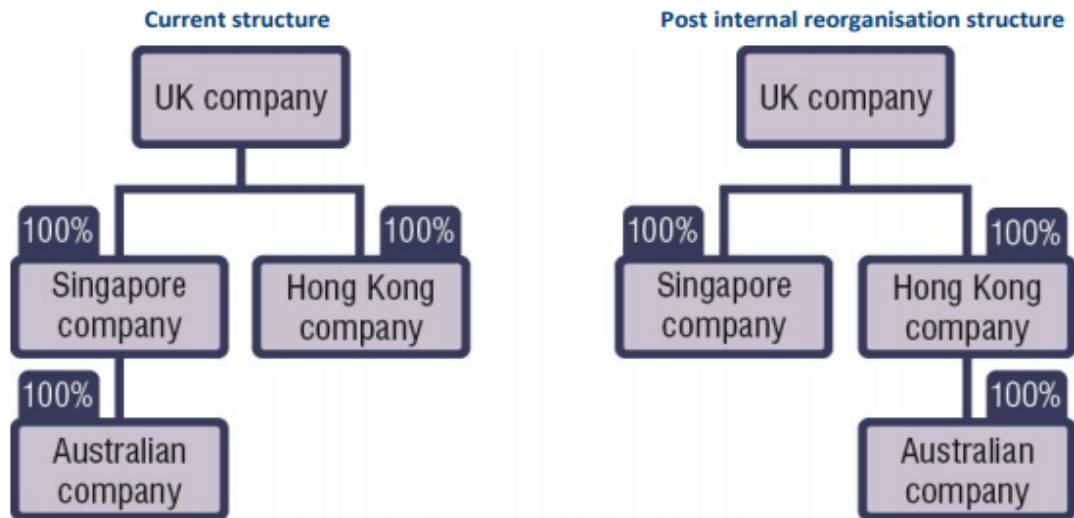
Type of internal reorganisation	Fee
Internal reorganisation if not all of the actions are reviewable national security actions	\$29,500
Internal reorganisation if all of the actions are reviewable national security actions	\$7,375

⁴⁸ See section 27B of the Regulation.

⁴⁹ See section 41 of the Fees Regulations.

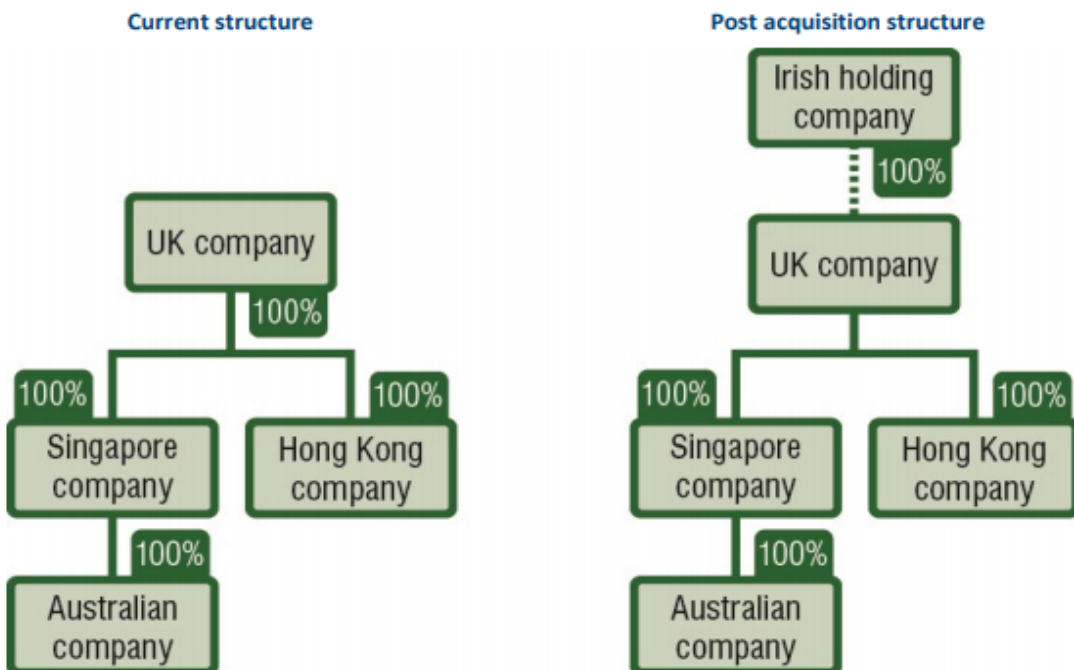
Examples

Example 1 – Internal reorganisation



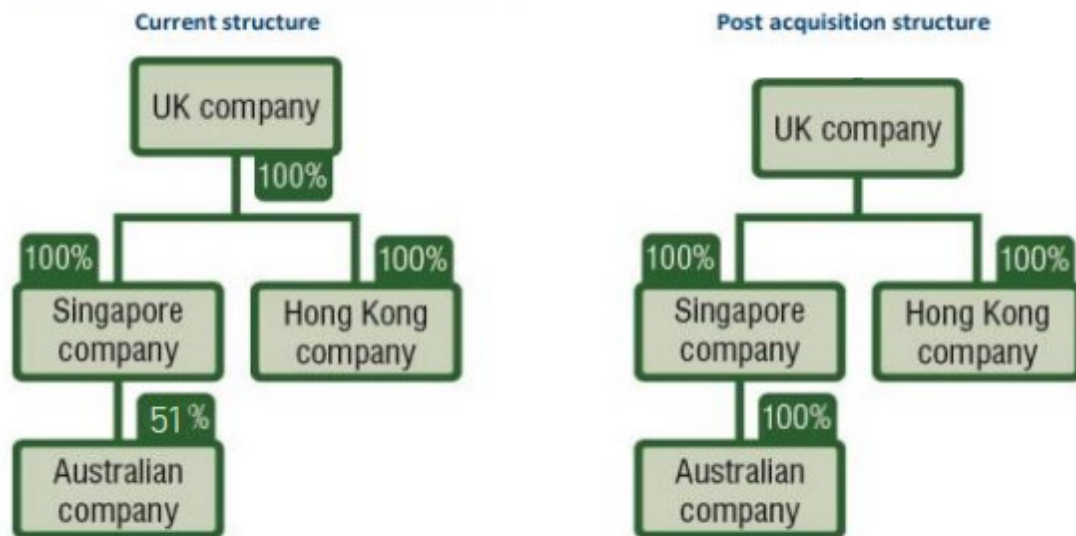
This is an internal reorganisation because the parent entity (ultimate owner) remains the same.

Example 2 – Not an internal reorganisation



This transaction would not be considered an internal reorganisation because a new parent entity has been created.

Example 3 – Internal reorganisation



This is an internal reorganisation because the target is a subsidiary of the acquirer (see subsection 41(2)(a)(ii) of the Fees Regulations). The majority owner fee rule will not apply to this acquisition (see subsection 54(5) of the Fees Regulation).

J: Indexation of fees

Fees are indexed each year on 1 July to the All Groups Consumer Price Index number published by the Australian Bureau of Statistics.⁵⁰

The Fees Act⁵¹ and the Fees Regulations⁵² explain how fees are indexed. If indexation results in an increase in fees for a financial year, the new fees will apply to applications received on or after the first day of that financial year.

Each financial year, the *Fees* Guidance Note and the Schedule of Fees are updated to reflect indexation. The summary page at the beginning of this Guidance Note indicates the financial year that the fee amounts reference.

⁵⁰ ABS catalogue number 6401.0.

⁵¹ See sections 7, 8, and 9 of the Fees Act.

⁵² See Part 5 of the Fees Regulations.

K: Maximum fees

Fees for foreign investment applications cannot exceed a certain amount (called the maximum fee). The amount of the maximum fee depends on the kind of application.

Maximum fee for giving notice of a notifiable action

The maximum fee for giving notice of a notifiable action which is not a residential land (established dwellings) action is usually \$1,171,600.

The maximum fee for giving notice of a residential land (established dwellings) action is usually \$3,514,800.

If a single agreement covers multiple land actions and residential land is not the dominant kind of land, then the maximum fee for the land actions:

- which are not reviewable national security actions is \$1,171,600
- which are reviewable national security actions is \$292,900.

However, if multiple land actions are covered by a single agreement and:

- the dominant kind of land is residential land, and
- one or more of the actions covered by the agreement is an acquisition of an interest in residential land (established dwellings)

then the maximum fee for all of the land actions covered by the agreement is worked out using the adjusted maximum fee method,⁵³ which is set out in the box below.

Maximum fee for applying for a residential exemption certificate

The maximum fee for an application for an established dwelling exemption certificate is \$3,514,800. The maximum fee for an application for a residential land (other than established dwellings) exemption certificate is \$1,171,600.

Maximum fee for applying for a general exemption certificate

If a general exemption certificate does not cover established dwellings, the maximum fee is usually \$878,700.

However, if the certificate does not cover established dwellings and only covers reviewable national security actions, the maximum fee is \$292,900.

If the exemption certificate covers established dwellings, the maximum fee depends on the proportion (by value) of actions to be covered by the certificate which are residential land (established dwellings) actions. The Fees Regulations set out a method to calculate the maximum fee for these kinds of applications.⁵⁴ This method is called the adjusted maximum fee method. It is set out in the box below.

However, if the exemption certificate covers established dwellings and only covers reviewable national security actions, the maximum fee is \$878,700.

⁵³ See subsection 51(5) of the Fees Regulations.

⁵⁴ See subsection 33(4) of the Fees Regulations.

How to work out the maximum fee using the adjusted maximum fee method

Apply the following formula, rounding the result of the part of the formula in brackets ($A + (B \times C)$) down to the nearest multiple of \$100 before multiplying by D:

$$(A + (B \times C)) \times D$$

Where:

- A is the sum of the fees for each action to be covered by the exemption certificate which is a residential land (established dwellings) action
- B is equal to $1 - \frac{A}{\$3,514,800}$. This represents the unused fraction of the maximum fee after subtracting the fraction of the maximum fee for residential land (established dwellings) that was used by residential land (established dwellings) actions.
- C is \$1,171,600, which is the usual maximum fee for giving notice of a notifiable action, except for actions involving residential land (established dwellings).
- D is the discount (if any) that applies to the kind of application. For applications for general exemption certificates other than reviewable national security exemption certificates, D is 0.75. For all other kinds of applications and notices, D is 1.

Example 35 – using the adjusted maximum fee method

A foreign person applies for an exemption certificate under section 58 of the Act. The certificate would cover \$10 million in acquisitions of commercial land and \$10 million in acquisitions of residential land (established dwellings).

Step 1 – Calculate the maximum fee for the application:

In this situation:

- A is \$796,500, which is what the fee would be for giving notice of a notifiable action to acquire an interest in residential land (established dwellings) for \$10 million.
- B is 0.773386821440765.
- C is \$1,171,600.
- D is 0.75, which is the discount that applies to general exemption certificates.

Accordingly, the maximum fee for the application is \$1,276,950:

$$\begin{aligned} & \$796,500 + (0.773386821440765 \times \$1,171,600) \\ & \approx \$1,702,600 \text{ (rounded down to the nearest \$100)} \times 0.75 \\ & = \$1,276,950 \end{aligned}$$

Step 2 – Compare the maximum fee for the application to what the fee would otherwise be:

The fee for the application is \$608,400 (\$11,025 for the commercial land acquisitions and \$597,375 for the residential land (established dwellings) acquisitions). This is lower than the adjusted maximum fee, so the fee is \$608,400.

Example 36 – using the adjusted maximum fee method

A foreign person applies for an exemption certificate under section 58 of the Act. The certificate would cover \$1 billion in acquisitions of commercial land and \$30 million in acquisitions of residential land (established dwellings).

Step 1 – Calculate the maximum fee for the application:

In this situation:

- A is \$2,566,500 (which is what the fee would be for giving notice of a notifiable action to acquire an interest in residential land (established dwellings) for \$30 million).
- B is 0.26980198019802.
- C is \$1,171,600.
- D is 0.75, which is the discount that applies to general exemption certificates.

Accordingly, the maximum fee for the application is \$2,161,950:

$$\begin{aligned} & \$2,566,500 + (0.26980198019802 \times \$1,171,600) \\ & \approx \$2,882,600 \text{ (rounded down to the nearest \$100)} \times 0.75 \\ & = \$2,161,950 \end{aligned}$$

Step 2 – Compare the maximum fee for the application to what the fee would otherwise be:

The fee for the application would otherwise be \$2,345,250 (\$420,375 for the commercial land acquisitions plus \$1,924,875 for the residential land (established dwellings) acquisitions), which is higher than the adjusted maximum fee, so the fee is \$2,161,950.

L: Fee waivers and remissions

Under section 115 of the Act, the Treasurer may waive or remit the whole or a part of a fee that is payable if satisfied that it is not contrary to the national interest to waive or remit the fee.

There are limited circumstances in which fees are likely to be waived or remitted. Waivers are assessed on a case-by-case basis, and you should not expect a particular outcome on a waiver or remission application. All decisions on fee waivers or remissions are final.

Circumstances where a fee waiver or remission may apply

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

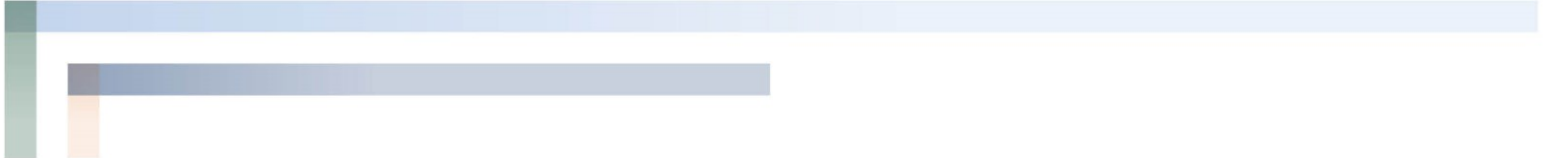
- you have withdrawn a previous application and submitted an application which is substantially the same as the previous application.
- multiple applications are made by members of an unincorporated consortium in relation to a single acquisition in circumstances where, if the consortium were incorporated, only one notice and fee would have been required.
- you have applied for a variation to a no objection notification or exemption certificate which relates to residential land to update the description of the land because it has changed since you made the original application (see details below).
- you made an application for an exemption certificate that was not approved and are now making an application that covers an action that would have been covered by the exemption certificate (see details below).
- you received an exemption certificate but did not utilise the full financial limit of that certificate and are now making an application for another exemption certificate (see details below).
- you have been unsuccessful in a competitive bid process (see details below).
- you are investing in a Build to Rent development (see details below).
- you have applied for a [passive foreign government investor exemption certificate](#), in which case the fee will be reduced to the flat fee through a fee waiver or remission.

Residential land variation applications

If you apply for a variation to an approval which relates to residential land to update the description of the land because it has changed since you made the original application (for example, if the lot number has changed), the fee for the variation will generally be waived.

Exemption certificate that was not granted

If you made an application for an exemption certificate that was not approved and are now making one or more applications (the subsequent applications) that cover actions that would have been covered by the exemption certificate, the fees for the subsequent applications, up to the amount of the fee for the exemption certificate application, will generally be waived.



If the entity that applied for the exemption certificate is within a corporate group, the fee may be credited towards applications made by other entities within the same group with the written consent of an authorised officer of the entity that applied for the exemption certificate.

Exemption certificate fee rollovers

If you received an exemption certificate (the first exemption certificate) but did not utilise the full financial limit of that certificate and are now making an application for another exemption certificate (the second exemption certificate) we will consider waiving an amount of the fee for the application for the second exemption certificate that corresponds to the amount of the financial limit of the first exemption certificate that you did not use. This will be assessed on a case-by-case basis and rollover amounts will usually need to be more than the relevant fee constant.

Competitive bid processes

Overview

If you were genuinely unsuccessful in a competitive bid process, you can request either:

- a refund of part (up to 75 per cent) of the application fee you paid (called a competitive bid refund), or
- that the full amount of the application fee be credited to a different application made in the following 24 months (called a competitive bid credit).

You cannot receive both a competitive bid refund and a competitive bid credit.

Eligibility criteria

To request a competitive bid refund or credit, you must have:

- given notice of an action which is an acquisition of an interest through a competitive bid process,
- if you are requesting a competitive bid refund—given notice of that action after 1 May 2024,
- participated in the competitive bid process, and
- been genuinely unsuccessful in the competitive bid process.

Actions involving residential property (for example, auctions of residential property) are not eligible for competitive bid refunds or credits. Actions which are covered by an exemption certificate are also not eligible for competitive bid refunds or credits.

Meaning of competitive bid process

A competitive bid process is a process which involves two or more participants who place bids for a particular asset and an outcome that is uncertain at the time bids are made.

Meaning of genuinely unsuccessful

Generally, you have been genuinely unsuccessful in a competitive bid process if:

- you made a bid (whether it was non-binding or binding),
- you did not withdraw from the process before you knew that your bid would not be successful,
- you were acting at arm's length from the person conducting the process, and
- you have been told by the person conducting the process that your bid was not successful.

Competitive bid refunds

A competitive bid refund is a refund of the lesser of:

- 75 per cent of the fee you paid, or
- the amount of the fee you paid minus the amount of the minimum fee (currently \$4,300).

You can only request a competitive bid refund within 6 months after the day on which you are informed that you have been unsuccessful in the competitive bid process.

If you receive a competitive bid refund, you should not take the action specified in the no objection notification you received.

Competitive bid credits

A competitive bid credit is a credit of the amount of a fee you paid for a previous application (the first application) against the fee for a new application (the second application).

You can only receive a credit once, even if the full amount of the credit has not been used up (for example, if the fee for the second application is less than the fee for the first application).

You can only request a competitive bid credit towards new applications made within 24 months after the day on which you were advised that you were unsuccessful in the competitive bid process.

How to request a competitive bid refund or credit

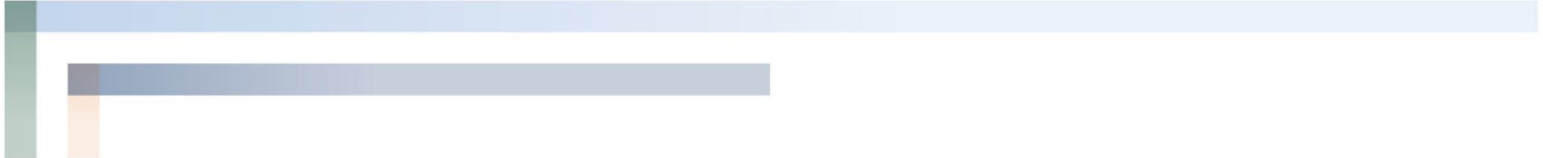
If you are participating in a competitive bid process, you should include this information in your cover letter when you make your foreign investment application.

If you are informed that you have been unsuccessful in the competitive bid process, you can choose to request either a competitive bid refund or a competitive bid credit.

If you choose to request a competitive bid refund, you can do so by emailing ForeignInvestmentEnquiries@treasury.gov.au with an email title including the words "Request for competitive bid refund" and your case reference number. In your email, you should provide supporting documentation, including documentary evidence (preferably evidence provided by the person running the process) that you participated in a competitive bid process and were genuinely unsuccessful in that process. Giving false or misleading information is a serious offence.⁵⁵

If you choose to request a competitive bid credit, you can do so by emailing the case officer you are assigned for the second application with an email title including the words "Request for competitive bid credit", or by including a request in the second application. If an entity requests

⁵⁵ See *Criminal Code* section 137.1.



a competitive bid credit but it is not the entity that made the first application (for example, because it is another subsidiary of the same parent company), the requesting entity will need to provide the written consent of an authorised officer of the entity that made the first application.

Decisions to grant a competitive bid refund or competitive bid credit will be made on a case-by-case basis. The factors and information above are general guidance and do not presuppose or guarantee the outcome of a particular case.

Investments in Build to Rent developments

Overview

If you propose to:

- acquire interests in residential or agricultural land on which a Build to Rent (BTR) development will be constructed, or
- acquire interests in residential land on which there is a completed BTR development,

then you may apply for concessional fee treatment that treats the land that has or will have a BTR development on it as commercial land for fee purposes only. For the concessional fee treatment to be considered, you will need to make this request in your application.

The concessional fee treatment only relates to calculating the application fee which is payable. The type of land and the relevant monetary threshold for your proposed acquisition remain unchanged.

If your proposal to acquire a BTR development is approved, it will generally be approved subject to conditions. See also the *Residential Land* Guidance Note for further information on BTR developments, including the definition of a BTR development and information on conditions.

Amount of the BTR fee waiver

The amount of the BTR fee waiver will generally reduce the fee to that which would be payable if the proposed action had involved commercial land instead of the type of land used for the BTR development. The waiver will be calculated on a per action basis.

The initial fee for the application is calculated based on the actions and the type of land your proposal involves. A new BTR development may involve agricultural land, residential land (established), residential land (vacant) and/or commercial land. An established BTR development may involve residential land (established) and/or commercial land.

If your proposed investment involves interests in BTR and non-BTR related actions, the amount of the BTR fee waiver will be calculated based on the specific facts of your proposed investment.

Example 37

A foreign person proposes to acquire established residential land (with established dwellings) for \$10 million to construct a new BTR development. The foreign person provides sufficient evidence to demonstrate the nature of the development as a BTR development. The residential land fee payable is \$796,500. The commercial land fee that applies to acquisitions for \$50 million or less is \$14,700 so, if given, the amount of the BTR fee waiver is \$781,800.

Example 38

A foreign person proposes to acquire an established BTR development which contains dwellings and retail outlets for \$11 million under a single agreement (\$8 million for dwellings and \$3 million for retail outlets).

The value of the dwellings is greater than the value of the retail outlets, so the dominant kind of land is residential land. The residential land fee payable is \$619,500 (for \$8m of residential land with established dwellings) plus \$59,000 (for \$3 million of residential land without established dwellings), totalling \$678,500.⁵⁶ Treating the residential land as commercial land would result in a fee payable based on \$11 million of consideration for commercial land. The commercial land fee that applies to acquisitions of \$50 million or less is \$14,700, so if given, the amount of the fee waiver is \$663,800.

Example 39

A foreign person proposes to acquire 10 titles of land to construct a BTR development, as follows:

- A. Five titles that are established residential land (\$25 million consideration), and one title that is commercial land (\$5 million consideration); these six titles are purchased under a single agreement, and
- B. One title of established residential land (\$4 million consideration), and
- C. Three titles of commercial land (total \$20 million consideration).

The person provides sufficient evidence to demonstrate the nature of the development as a BTR development. The fee waiver would be calculated as follows:

- A. Single agreement fee: the dominant kind of land is established residential land - the established residential land (\$25 million consideration) is treated as commercial land, so the fee is based on total consideration of \$30 million for commercial land. The applicable fee is the commercial land fee for acquisitions of \$50 million or less is \$14,700,
- B. One title of established residential land: treating the established residential land (\$4 million consideration) as commercial land, the applicable fee is the commercial land fee for acquisitions of \$50 million or less is \$14,700, and
- C. Three titles of commercial land: total consideration of \$20 million – the commercial land fee for acquisitions of \$50 million or less is \$14,700,

The total fee payable is \$44,100. The fee waiver for A is \$2,551,800 and the fee waiver for B is \$250,800, if given.

When fees are unlikely to be waived or remitted

Generally, a fee waiver or remission is unlikely to be granted in circumstances including where:

- your application is not approved,
- you changed your mind,
- you have withdrawn your application,
- the investment did not proceed, or
- you paid a lower price for the acquisition than you thought you would.

Applying for a fee waiver or remission

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

Further information

Further information is available on the [Foreign Investment website](#) or by contacting 1800 050 377 from Australia or +61 2 6216 1111 from overseas.

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

⁵⁶ See subsection 51(5) of the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020*.