

Australia: Major reform of foreign investment regime to take effect from 1 January 2021

EY Tax News Update: Global Edition

EY's Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration [here](#).

Also available is our [EY Global Tax Alert Library](#) on ey.com.

Executive summary

On 10 December 2020, two significant changes to Australia's foreign investment regime received Royal Assent - the *Foreign Investment Reform (Protecting Australia's National Security) Act 2020* (Cth) and the *Foreign Acquisitions and Takeovers Fees Imposition Amendment Act 2020* (Cth). The new legislation (Major Reform) will commence on 1 January 2021 and aims to ensure that Australia's foreign investment framework keeps pace with emerging risks and global developments.

The key provisions of the Major Reform include:

- ▶ A reinstatement of certain monetary thresholds for transactions that occur after 1 January 2021
- ▶ An extension of an AU\$0¹ monetary threshold to certain categories of assets and transactions
- ▶ A new "user-pays" fee regime - linked to asset and transaction value
- ▶ An extension of the definition of a "national security business"
- ▶ Extensive new powers for the Treasurer to "call-in" and review transactions that have not been previously notified

Detailed discussion

\$0 monetary thresholds

\$0 thresholds will continue apply to the following types of investors/acquisitions:

Monetary screening thresholds which were \$0 prior to the introduction of the COVID-19 temporary measures

- ▶ Any investment by a foreign government investor
- ▶ Investments relating to Australian media businesses
- ▶ Acquisitions of an interest in Australian residential land
- ▶ Acquisitions of an interest in Australian vacant commercial land
- ▶ Acquisitions of an interest in a mining and production tenement (with the exception of investors from Chile, New Zealand and the United States)

New \$0 monetary screening threshold which will be introduced as part of the reforms on 1 January 2021

- ▶ Starting, or acquiring a direct interest in, a national security business
- ▶ Acquiring a direct interest in an entity that carries on a national security business
- ▶ Acquiring an interest in Australian land that is national security land
- ▶ Acquiring a legal or equitable interest in an exploration tenement relating to national security land

Guidance Note updates

The Foreign Investment Review Board (FIRB) is currently preparing updated Guidance Notes on the impact of the Major Reform.

Processing timeframes to be confirmed

FIRB has yet to confirm whether the statutory timeframe for consideration of an application and notification to the applicant of its decision will revert to the pre-COVID-19 period of 40 days or remain at the temporary up to six-month time period.

Foreign Interference legislation

Also receiving Royal Assent on 10 December 2020 was new “foreign interference” legislation designed to protect Australia against foreign interference and deter any attempts to undermine Australia’s national interests. The *Foreign Relations (State and Territory Arrangements) Act 2020* (Cth) establishes a legislative mechanism for the Commonwealth, to assess and manage the effect of arrangements between State or Territory governments and foreign governments, and their associated entities. This includes Australia’s universities’ arrangements.

National Security Business definitions to be extended

Additional changes to Australia’s definition of “national security business” have also been set forth in legislation that was tabled in Parliament on 10 December 2020 to amend the *Security of Critical Infrastructure Act 2019* (Cth). The following industries are likely to be considered a “national security business”: communication, financial services and markets, data storage and processing, food and grocery, transport, defense industry, higher education and research, energy, healthcare and medical, space technology and water and sewerage. Transactions involving a national security business will require FIRB approval, regardless of the value.

These changes are part of Australia’s Cyber Security Strategy released on 6 August 2020.

No corporate reorganization relief and additional budget allocation

Investors should also note that:

- ▶ The Major Reform did not include corporate reorganization relief.
- ▶ FIRB and the Australian Taxation Office have been allocated additional funds in the 2020/2021 Federal Budget to address the Major Reform and process additional applications.

Impact

These new laws, and specifically the Major Reform are complex and often involve interaction between various Australian government departments including the Treasury and the Australian Taxation Office.

Endnote

1. Currency references in this Alert are to the AU\$.

For additional information with respect to this Alert, please contact the following:

Ernst & Young (Australia), EY Law, Sydney

- ▶ Alex Worner alex.worner@au.ey.com
- ▶ Amber Cerny amber.cerny@au.ey.com

Ernst & Young LLP (United States), Australian Tax Desk, New York

- ▶ David Burns david.burns1@ey.com

Ernst & Young LLP (United Kingdom), Australian Tax Desk, London

- ▶ Naomi Ross naomi.ross@uk.ey.com

About EY

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

© 2020 EYGM Limited.
All Rights Reserved.

EYG no. 008807-20Gbl

1508-1600216 NY
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com