

Proposed conditions of approval

Standard conditions to be met for an application not to be against the national interest

1. The applicant must comply with Australia's taxation laws in relation to the action, and any transactions, operations or assets in connection with the assets or operations acquired, directly or indirectly, as a result of the action.
2. The applicant must use their best endeavours to ensure, and within their powers must ensure, that its associates* comply with Australia's taxation laws in relation to the action and any transactions, operations or assets in connection with the assets or operations acquired, directly or indirectly, as a result of the action.
3. The applicant must provide any documents or information[^] requested by the Australian Taxation Office (ATO) in connection with the application or potential application of Australia's taxation laws in relation to the action and any transactions, operations or assets in connection with assets or operations acquired, directly or indirectly, as a result of the action. These documents or information must be provided within the timeframe specified by the ATO.
4. The applicant must use their best endeavours to ensure, and within their powers must ensure, that its associates provide any documents or information[^] requested by the ATO in connection with the application or potential application of Australia's taxation laws in relation to the action and any transactions, operations or assets in connection with assets or operations acquired, directly or indirectly, as a result of the action. These documents or information must be provided within the timeframe specified by the ATO.
5. The applicant must notify the ATO if it enters or has entered into any material (as defined by the ATO) transaction(s) or other dealing(s) in connection with the action and any material transactions, operations or assets in connection with assets or operations acquired, directly or indirectly, as a result of the action, to which the transfer pricing rules in Division 815-B of the *Income Tax Assessment Act 1997* or the anti-avoidance rules in Part IVA of the *Income Tax Assessment Act 1936* may potentially apply, where such transactions or dealings have not been previously notified to the Commissioner.
6. The applicant must use its best endeavours to ensure, and within its powers must ensure, that its associates must notify the ATO if they enter or have entered into any material (as defined by the ATO) transaction(s) or other dealing(s) in connection with the action and any material transactions, operations or assets in connection with assets or operations acquired, directly or indirectly, as a result of the action, to which the transfer pricing rules in Division 815-B of the *Income Tax Assessment Act 1997* or the anti-avoidance rules in Part IVA of the *Income Tax Assessment Act 1936* may potentially apply, where such transactions, dealings, operations or assets have not been previously notified to the Commissioner.
7. The applicant must pay any outstanding taxation debt, and must use their best endeavours to ensure, and within their powers must ensure, that its associates pay any outstanding taxation debt, which is due and payable at the time of the proposed action.
8. The applicant must provide an annual report to the Foreign Investment Review Board on compliance with these conditions. The first report must cover the first 12 month period commencing on the date of this notice. All subsequent reports must cover a 12 month period beginning on each anniversary of the date of this notice. Each report must be provided within 30 days after the end of the 12 month period to which it relates.

* Associates has the meaning in section 318 of the *Income Tax Assessment Act 1936*

[^] This includes documents or information held, possessed or stored outside Australia

Possible additional conditions for cases where a significant tax risk is identified

1. The applicant must engage in good faith with the ATO to resolve any tax issues in relation to this transaction and its holding of the investment.*
2. The applicant must provide information as specified by the ATO on a periodic basis including at a minimum a forecast of tax payable.^

* Depending on the issues raised by the ATO this might include entering into the negotiation of an advance pricing arrangement or the obtaining of a private ruling with the ATO within a certain timeframe, or compliance with thin capitalisation requirements or changes to the structure of the takeover. The relevant requirements would be included and tailored as appropriate in each case.

^ This could include a requirement to advise the ATO, and provide an explanation, of significant variations from the forecast of tax payable.