

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the FOREIGN INVESTMENT PROPOSALS

2019 - 2020

Division: Foreign Investment Division
Topic: Overdue Conditions
Reference: Written

Question:

How many entities that obtained foreign investment approval, subject to conditions, have not met those conditions within the timeframe established in the initial approval (other than the requirement to follow Australian taxation and company laws or similar)? This includes approvals where Treasury is 'working with' companies to ensure compliance, but where the company has not complied with the condition within the initial timeframe.

Answer:

Conditions are imposed on proposed investments and only become enforceable if the actions covered by a no-objection notification proceed. This means that there may be a number of conditions that are never complied with because the transaction did not proceed (and therefore there is no requirement that the conditions are met).

There are three relevant categories of conditions:

1. Conditions where a specific timeframe is included in relation to a specific condition, for example, to maintain headquarters in Australia for a specified amount of time. There is no record of non-compliance in relation to such conditions.
2. Conditions requiring a compliance audit to take place within a specified period of time after the acquisition took place, and for a remediation plan to be put in place to address any non-compliance identified in that audit. The remediation plans establish timelines for action.

It is current practice that all no-objection notifications imposing conditions include a requirement for regular compliance reporting, either by an officer of the investor in a prescribed form (for lower risk investments) or by independent audit (for higher risk investments). This requirement is in addition to the reporting requirement that is imposed in relation to the standard tax conditions under which investors subject to tax conditions must report annually on compliance with those tax conditions. If non-compliance is identified in either the prescribed form report, or an independent audit, a remediation plan must be submitted for approval. Where it was not appropriate for the non-compliance to be addressed through a remediation plan, or the investor was unable to provide an acceptable remediation plan, other enforcement options remain available. Please refer to IQ20-000054.

There is no record of any targets for compliance under remediation plans not being met.

3. Obligations are ongoing.

These categories do not encompass timeframes for compliance reporting that are specified in conditions. As part of compliance monitoring, where issues with the timeliness in delivering such reports are identified, these are followed up with investors. Please see the response to question 19 (please refer to IQ20-000049).