

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

**Inquiry into the Foreign Investment Reform (Protecting Australia's National Security) Bill 2020
and Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020 [Provisions]**

Division: Foreign Investment Division
Topic: Effect of comparable reforms
Reference: Spoken 18 November 2020

Question:

CHAIR: Sorry, Senator O'Neill, I'll just ask a question here because I am interested in this. Obviously foreign investment is essential. Have you got comparable examples? You've talked about a number of other countries who are introducing more comprehensive foreign investment regimes. Have you got comparable countries where foreign investment has continued to flow post the introduction of those or is everyone only thinking about this in the current international environment?

Mr Hamilton: As Ms Kelley said, there are a range of countries that are implementing new powers. The particular focus of your question—what's been the implication of those changes post introduction?—I will need to check if I have some notes here. If not, we could maybe take that on notice—

CHAIR: I'm happy for you to take it on notice. I expect we are all heading in the same direction at roughly the same time.

Answer:

In recent years, many countries have updated their foreign investment review regimes to address evolving national security risks. In its Twenty-fourth Report on G20 Investment Measures, released on 18 November 2020, the United Nations Conference on Trade and Development (UNCTAD) notes an acceleration in this trend.

These changes must be viewed in the context of global trends in foreign direct investment (FDI) flows. Even before COVID-19, global FDI inflows during 2018 and 2019 were lower than at any time since 2010 – a change UNCTAD has attributed in part to the effects of 2017 tax reforms in the United States. In addition, outward FDI from China declined 55 per cent from 2016 to 2019 – a decline driven largely by Chinese domestic policy settings, including increased regulatory scrutiny of outbound capital flows. More recently, UNCTAD estimates that global FDI flows fell 50 per cent in the first half of 2020 as a result of the economic disruption associated with COVID-19.

Against this background, it is not possible to draw firm conclusions about the effect that changes to foreign investment review policy settings in a particular country have had on FDI flows into that country.

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**Inquiry into the Foreign Investment Reform (Protecting Australia's National Security) Bill
2020; Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020**

Division: Foreign Investment Division
Topic: Concerns Raised by Foreign Governments
Reference: Spoken 18 November 2020

Question:

Mr Deitz: That is certainly part of it. It is also partly a feature of the way that our act operates. There are some technical provisions which can deem an acquisition to have taken place many years before in fact the title transfers, for example, for property. The way section 15 operates means that it can be, again on the advice of different agencies, perhaps anywhere up to four years before the acquisition in fact occurs. It can start to appear in ways which will allow us to identify that information and take a decision. So there are a range of factors that we've balanced in reaching that decision.

Ms Kelley: From what has just been said, it's not out of line with our key partner agencies, when you look at three of them who have not set a time limit at all.

Senator O'NEILL: Have foreign governments raised concerns with you about the changes at all? Which changes and which governments?

Mr Deitz: With Treasury?

Senator O'NEILL: Yes.

Mr Deitz: There are no direct concerns that I am aware of. I would have to take it on notice whether there were any submissions to that end.

Mr Hamilton: We have consulted very extensively with a number of close partners in relation to the way that we've been working on these reforms. In the conversations that I've had, they have been very supportive of what we are doing.

Senator O'NEILL: Could you provide me with a sense of what foreign governments you've been consulting with?

Mr Hamilton: I'll take that on notice. I just need to confirm what we can provide advice to the committee on.

Mr Deitz: There is also the Department of Foreign Affairs and Trade and Austrade who have been engaging in significant representations with respect to these reforms, and with foreign governments as well. There have been many engagements and a lot of clarifying questions. We have to take on notice the specifics of your question.

Answer:

Treasury engaged with following governments during its consultation process: Canada, Israel, New Zealand, the European Union and its member States, the Republic of Korea, the United Kingdom, the United States, China, Japan, Hong Kong SAR, Mexico, Singapore, Vietnam and the United Arab Emirates. In addition to Treasury-led engagements, the Department of Foreign Affairs and Trade and the Australian Trade and Investment Commission have engaged with other governments with respect to the reforms.

The Government of Mexico and the Delegation of the European Union provided public formal submissions.

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**Inquiry into the Foreign Investment Reform (Protecting Australia's National Security) Bill
2020; Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020**

Division: Foreign Investment Division
Topic: Compliance and Enforcement Staffing Numbers
Reference: Spoken 18 November 2020

Question:

Senator O'NEILL: What additional resources does Treasury have to undertake that outreach in December to the sectors? Also, what additional resources do you have in addition to the IT money, which we have already had on record, to undertake wholesale increase in the enforcement capacity of this department?

Ms Kelley: That's where we go to what I said in my opening statement. We now have our compliance branch with 17 full-time equivalent staff. We are in a recruitment process, and by January 2021 we will have upsized to 30 full-time equivalent staff. That covers the compliance and enforcement side. We have also taken on, as I said, increased staff in our case assessment area, and we have also supplemented that with some non-ongoing staff to help us with the temporary zero-dollar threshold work as well.

Senator O'NEILL: Can you provide on notice the numbers and the levels of the people who are going to do that work?

Mr Hamilton: Senator, your question was around how many people are working on the guidance material. It is very difficult to give you a definitive answer because that guidance material depends on expertise across the division. For example, guidance material on how the new compliance regime will work will depend on people who have expertise on the legislation, compliance staff who have expertise on compliance and our case management staff who understand how the system works in terms of providing advice for the Treasurer's consideration. So it's not as though there will necessarily be one person dedicated to one task. It is about expertise resident in people across the division who will be drawn upon to provide that guidance. As Ms Kelley said, we are growing; we are at about 114 permanent staff now. A lot of those will be involved, in some way or another, in working on this guidance material.

Answer:

The Foreign Investment Division's implementation of the legislative and policy framework, to facilitate investment and protect the national interest, draws on a range of skills and efforts across its 114 staff.

For the Compliance Branch, recruitment is currently underway to increase from 17 FTE in November 2020 to a target of 30 FTE in 2021 comprising of:

1 x SES Band 1
5 x EL2
11 x EL1
13 x APS