

**SENATE RURAL & REGIONAL AFFAIRS & TRANSPORT
REFERENCES COMMITTEE**

INDEX OF TABLED DOCUMENTS

Inquiry into the Foreign Investment Review Board National Interest Test

Canberra, Thursday, 16 August 2012

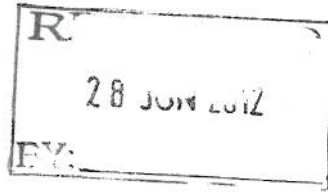
LODGED BY	TITLE/SUBJECT	PAGES
Senator Heffernan	Correspondence from the Australian Taxation Office to Senator Heffernan dated 22 June 2012.	2

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Australian Government
Australian Taxation Office

Senator Bill Heffernan
Level 7
100 William St
Woolloomooloo
NSW 2011



22 June 2012

Dear Senator Heffernan

I refer to your telephone conversation with Second Commissioner Bruce Quigley on 8 June 2012, and our subsequent telephone discussion on 21 June 2012.

I write to confirm the ATO's general approach to the income tax treatment of foreign sovereigns and corporate entities.

Income tax will be generally payable if:

- a sovereign state undertook business activities in Australia either directly or indirectly through a company. This is the most common scenario we encounter with foreign Government business ventures. If the investment is through an Australian company it would be taxable on its profits and any supplies of produce (including to a foreign government or foreign company) would be subject to Australia's transfer pricing provisions.

Income tax will generally not be payable if:

- the investment was not in relation to a business venture. For example if the investment was in relation to a farm and there was no ultimate sale of the goods produced in Australia and the goods were distributed to needy persons. This would be the same as if an Australian entity invested in a farm and distributed goods to needy persons. If there is genuinely no sale of product or profitable purpose at any stage, an arm's length amount of the value of product leaving Australia would not be 'income' for the sovereign state or foreign company.
- the income was 'passive' income, for example interest, earned by a sovereign state from investments in Australia would be exempt from tax under the doctrine of sovereign immunity. Similarly for income from dividends where its investment was of a non commercial nature (for example under 10% holding) and falls within the sovereign immunity exemption. (Running a farm for profit is not passive income and would be taxable.)
- the income derived from a capital gain that did not arise from the disposal of a taxable interest in Australian real property. In very limited circumstances, a sovereign state may also not be taxable on the capital gains from the sale of an otherwise taxable interest in Australian real property if its investment was of a non commercial nature and it falls within the sovereign immunity exemption.

I trust that this information satisfies your enquiry, and please do not hesitate to call me on 02 6216 2850 if you require further information.

Yours sincerely

Stuart Hamilton
Deputy Commissioner (acting)
Large Business and International