

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: Treasury

Question: BET 46

Topic: Anti-avoidance provisions

Reference: Hansard page no. 46 - 02 June 2015

Senator: Ketter, Chris

Question:

Senator KETTER: Before lunch, Mr Heferen, I asked you about the level of consultation with companies in relation to this particular measure prior to its announcement. You indicated it was 'very limited'—I think those were the words you used. Were there any major concerns raised by stakeholders in relation to the measure?

Ms McCulloch: We consulted with a range of stakeholders in confidence. There are two ways to think about it. They are not happy with the measure and, in many respects, there were some concerns around the lack of uncertainty that comes with making changes to the anti-avoidance provisions. Having said that, we worked very closely with the stakeholders to try to target the measure in a way that got to the activity that was of concern, so that fewer taxpayers were impacted by it.

Senator KETTER: Were these the 30, or outside that group of 30?

Ms McCulloch: We do not know who the 30 are. The consultations were with a range of firms, tax advisers and tax practitioners.

Senator KETTER: So how does this measure affect Australia's participation in the OECD BEPS program?

Senator Cormann: It is consistent with it.

Mr Heferen: We have attempted to fashion a provision that aligns very closely with where we think action item 7 will end up, which is the work on avoidance of a permanent establishment. In fact, at the G20 meeting prior to the budget the Treasurer spoke with Angel Gurría, the Secretary-General of the OECD, to confirm that Australia needed to proceed ahead of the OECD. My understanding is that Gurría was relatively relaxed with that—he was, after all, in a previous role a finance minister and understands that a country's needs can sometimes go ahead of the multilateral institution. I think he was reassured by the fact that the Treasurer could say we will do what we can to make sure it is consistent. In relation to the consultations we have had with some of Ms McCulloch's and my counterparts in other jurisdictions, the US ones I think it is fair to say are a little bit concerned because obviously in the press a lot of the multinationals that would arguably be affected are United States multinationals, but when we explain what we have done and what the government is proposing, they understand it, accept it and can see the logic in it and are comforted by the fact that it is pretty well in the direction where the OECD work is likely to come out.

Senator KETTER: The measure is targeted to apply where profit is shifted to low- or no-tax jurisdictions. Can you either identify those jurisdictions or tell us how you define them?

Senator Cormann: We might take that on notice.

Answer:

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BET 46 – The Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015 was introduced into Parliament on 16 September 2015. This Bill has been referred to the Senate Economics Legislation Committee for inquiry and report.

This Bill removed the ‘no or low tax’ requirement to provide greater certainty and minimise disputes around whether a company operates in a ‘low or no’ tax jurisdiction where it was clearly structured for the purpose of avoiding tax.