

31 August 2007

The Board of Taxation
c/- The Treasury
Langton Crescent
CANBERRA ACT 2600

By email: taxboard@treasury.gov.au

Business
Council of
Australia



REVIEW OF OFF-MARKET SHARE BUYBACKS

The Business Council of Australia welcomes the opportunity to provide input into the above review by the Board of Taxation.

The BCA believes that developing a world-class environment for business is an essential part of sustaining our strong current growth.

Towards that end, the BCA believes that policies adopted must promote the most efficient allocation and use of resources, avoid creating impediments to effective resource allocation, and support measured risk taking and innovation. Business must be able to respond quickly and effectively to changing preferences and market opportunities.

Ensuring that the tax and regulatory environment supports and enables the ongoing productivity, competitiveness and growth of business should therefore be a fundamental goal, as it is one that directly and indirectly delivers benefits for all Australians.

Corporate tax revenues have been the fastest growing revenue stream in recent years, expected to provide around \$65 billion in revenue in 2007-08 alone. Growth in corporate tax revenues has helped to underwrite the ability of the federal government to fund tax cuts and spending initiatives.

With the above in mind, the BCA would make the following comments in relation to the use of off-market share buybacks in Australia.

The BCA believes off-market share buybacks to be an effective and efficient means of capital management. Australian companies are increasingly expected to maintain an active capital management program, and off-market share buybacks have become a well-recognised tool in that regard.¹ It is the BCA's belief that off-market

¹ See, most recently as an example, discussion in Mitchell, S "Booming profits drive share buybacks to \$20 billion" Australian Financial Review, 24 August 2007, p1.

share buybacks are generally well regarded by the financial markets, including by both participating and non-participating shareholders.

As a result, the operation of off-market share buybacks should not be viewed through the prism of taxation alone, but must be considered in light of their overall role in the promotion of efficient capital markets, and the flow-on effects this has on the allocation of productive resources across the broader economy.

The BCA understands there are concerns in some quarters that different types of shareholders effectively receive different benefits from participation in an off-market share buyback. Tax-exempt and superannuation fund taxpayers, for example, may receive particularly advantageous results, as do taxpayers on lower marginal rates, such as retirees.

However, it is also clear that these different tax outcomes are not the result of buybacks themselves, but the fact that different types of shareholders are subject to different tax treatment as a result of unrelated policy decisions made by successive governments. While off-market share buybacks may illustrate certain inequalities in the taxation system, they are not responsible for them, a point noted by the Australian Securities and Investments Commission.²

It is important to remember that off-market share buybacks are offered equally to all shareholders. Like all investment decisions, the decision to participate in a buyback is the responsibility of the shareholder alone, taking into account their individual tax profile. Business should not be held responsible for assessing the individual profiles of shareholders who may or may not choose to take up such an offer.

The BCA is of the view that, if policy decisions are made by governments to effectively advantage some classes of taxpayers over others, then the impact of such decisions across the broader taxation system should be accepted as a consequence.

Similarly, the fact that there may appear to be an apparent disconnect between the treatment of buybacks under the corporations law (where no part of the buyback price is considered a dividend) and the tax law (where part of it is), is not of itself a reason to consider the current tax treatment unacceptable. There are a number of other instances throughout the tax law where tax and corporations law treatments differ.

Given that off-market share buybacks are offered equally to all shareholders, and that the differing tax consequences for shareholders arise out of unrelated policy decisions rather than the buyback process itself, the BCA believes that any revenue concerns arising from the current arrangements must be considered carefully against the broader role off-market share buybacks play in the capital markets.

Measured against the clear market belief that off-market share buybacks are an effective and important capital management tool, and in the context of continuing growth in corporate tax revenues, it is the BCA's position that the potential negative impacts on capital markets arising from proposed changes to the operation of off-market share buybacks would outweigh revenue concerns.

² See "05-44: ASIC'S position on off-market share buy-backs incorporating fully franked dividends" issued 3 March 2005.

In addition to the comments above, the BCA notes that it supports the detailed analysis of off-market share buybacks as outlined in the submission of the Corporate Tax Association, in response to the specific questions outlined in the Board of Taxations' discussion paper dated July 2007.

If you have any additional questions in relation to the above, please do not hesitate to contact Allesandra Fabro, Director Policy, on (03) 8664 2604 or allesandra.fabro@bca.com.au.