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Mr Richard Warburton AO
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The Board of Taxation
C/o The Treasury
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PARKES ACT 2006

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Dear Mr Warburton

Review of the Taxation Treatment of Off-Market Share Buybacks

The Group of 100 (G100) which is an organization representing the chief financial officers of Australia's largest business enterprises is pleased to comment on the Discussion Paper 'Review of the Taxation Treatment of Off-Market Share Buybacks'.

The G100 comments on the issues and options raised in the Discussion Paper are as follows:

The importance of off market buybacks in enabling corporations to manage capital and return funds to shareholders effectively and efficiently should not be underestimated. Any significant restriction of their use compared to the current position would be detrimental to the operation of efficient capital market practices and impede the ability of companies achieving desirable capital management outcomes.

Given the cyclical nature of the economy and industry and the general desire of directors to maintain a stable dividend policy, it is important for companies to consider methods, other than dividends, to return excess cash to shareholders. Given that, for most listed companies, equity is a more expensive form of capital than debt, the markets demand that companies look at efficient methods to manage capital where circumstances and investment opportunities permit. This is reflected in the very sharp focus on capital management initiatives of companies that the market perceives as having excess capital. Off-market buybacks have become, and are expected to remain, an efficient method for returning capital to shareholders.

The G100 considers buybacks to be a fundamental part of overall capital management plans for shareholders which has the commercial objective of increasing earnings per share with potentially positive impacts on the price of the remaining shares on issue and rebalances the debt/equity mix with consequential effects on the cost of capital.

Off-market buybacks are simple to execute, are supported within the financial markets, and allow control over both the cost and the number of shares being purchased. Thus it enables shares to be repurchased at the optimal buyback price which produces benefits for all shareholders.

Additionally, the G100 believes that the current framework for off-market buybacks provides benefits to both participating and non-participating shareholders. Different outcomes for different classes of taxpayers that may effect their decision whether to participate are the result of the structure of the tax system that has a different rate of tax and tax profile for different classes of taxpayers.

However, we believe that some of the restrictive administrative practices associated with the tax treatment of buybacks should be relaxed to allow more efficient operation of the buybacks. These include:

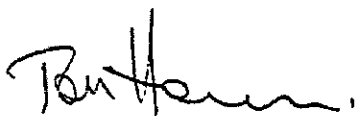
- Abolition of the arbitrary 14% cap on the level of discount. The G100 believes that the operation of market forces should determine the level of discount and, as such, there should not be any artificial caps on the discount which applies;
- There should be no deemed debit (wastage) of franking credits imposed under the anti-avoidance provisions of section 177EA unless there are artificial or contrived aspects of the buyback; and
- Abolition of the complex rules regarding adjustments to the notional market value at which the buyback is taken to have occurred.

We believe that a buyback is not primarily a way of utilizing franking credits as purported by some commentators. Buy-backs are an effective means of using excess franking credits and do not undermine the payments of fully franked ordinary dividends in the future. Rather, buybacks are commercially driven and are undertaken to improve capital efficiency and earnings per share. Where shareholders acquire shares after the buyback announcement but satisfy the 45 day rule they should continue to be entitled to use any available franking credits.

Whilst the current system which requires rulings to be gained from the ATO is well understood by those who undertake buybacks, efficiency and compliance gains could be delivered by the ATO issuing a comprehensive set of guidelines or safe harbour rules dealing with the principal features and characteristics of 'routine' buybacks. This would allow taxpayers who operate within those guidelines to undertake transactions without incurring substantial delays in obtaining private rulings which can result in a 6-8 week delay in the process.

Please feel free to call me to discuss any part of our response to the Board of Taxation's Discussion Paper.

Yours sincerely



Tom Honan
National President