2022

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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| **EXPOSURE DRAFT** |

Treasury Laws Amendment (Off‑Market Share Buy‑Backs) Bill 2022

No. , 2022

(Treasury)

A Bill for an Act to amend the law relating to taxation, and for related purposes

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A Bill for an Act to amend the law relating to taxation, and for related purposes

The Parliament of Australia enacts:

1 Short title

 This Act is the *Treasury Laws Amendment (Off‑Market Share Buy‑Backs) Act 2022*.

2 Commencement

 (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. |  |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

 (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

 Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Off‑market share buy‑backs

Part 1—Main amendments

Income Tax Assessment Act 1936

1 Section 159GZZZP (at the end of the heading)

Add “**if the company is not a listed public company**”.

2 At the end of section 159GZZZP

Add:

 (3) This section does not apply if the company is a listed public company.

3 After section 159GZZZP

Insert:

159GZZZPA No part of off‑market purchase price is a dividend if the company is a listed public company

 For the purposes of this Act, where a buy‑back of a share by a listed public company is an off‑market purchase, no part of the purchase price in respect of the buy‑back of the share is taken to be a dividend.

4 Subsection 159GZZZQ(3)

Omit “subsection (8)”, substitute “subsections (3A) and (8)”.

5 After subsection 159GZZZQ(3)

Insert:

 (3A) Subsection (3) does not apply if the buy‑back is by a listed public company.

6 Paragraph 159GZZZQ(8)(aa)

After “corporate tax entity”, insert “(other than a listed public company)”.

Income Tax Assessment Act 1997

7 Subsection 205‑30(1) (cell at table item 9, column headed “If:”)

Repeal the cell, substitute:

|  |
| --- |
| (a) the entity purchases a \*membership interest in itself; and(b) the purchase is an \*on‑market buy-back; and(c) the entity is a company |

8 Subsection 205‑30(1) (table item 9, column headed “A debit of:”, paragraph (a))

Repeal the paragraph, substitute:

(a) the purchase of the interest were a \*frankable distribution equal to the one that would have arisen if the entity:

(i) purchased the interest \*off‑market; and

(ii) in the case of a \*listed public company—were not a listed public company; and

9 Subsection 205‑30(1) (after table item 9)

Insert:

|  |  |  |  |
| --- | --- | --- | --- |
| 9A | (a) the entity purchases a \*membership interest in itself; and(b) the purchase is an \*off‑market buy-back; and(c) the entity is a \*listed public company | an amount equal to the debit that would have arisen if:(a) the purchase of the interest were a \*frankable distribution equal to the one that would have arisen if the entity were not a listed public company; and(b) the distribution were \*franked at the entity’s \*benchmark franking percentage for the \*franking period in which the purchase was made or, if the entity does not have a benchmark franking percentage for the period, at a \*franking percentage of 100% | on the day on which the interest is purchased |

10 Application of amendments

(1) The amendments made by this Part apply to a purchase by a listed public company if:

 (a) both:

 (i) the purchase is announced to the market at or before the time the purchase occurs; and

 (ii) the purchase is first announced to the market after 7:30 pm, by legal time in the Australian Capital Territory, on 25 October 2022; or

 (b) both:

 (i) the purchase is not announced to the market, or the purchase is first announced to the market after the purchase occurs; and

 (ii) the purchase occurs after 7:30 pm, by legal time in the Australian Capital Territory, on 25 October 2022.

(2) The purchase is ***announced to the market*** if:

 (a) the rules of an approved stock exchange require the company to notify the stock exchange of the purchase for the purpose of release to the market; and

 (b) notification of the purchase is released to the market following such disclosure.

Part 2—Other amendments

Income Tax Assessment Act 1936

11 Subsection 6(1)

Insert:

***listed public company*** has the same meaning as in the *Income Tax Assessment Act 1997*.

Note: For the meaning of listed public company in Schedule 2F to this Act, see section 272‑135 in that Schedule.

12 Paragraph 6BA(6)(a)

Omit “(within the meaning of the *Income Tax Assessment Act 1997*)”.

13 Subsection 45D(2)

Omit “within the meaning of the *Income Tax Assessment Act 1997*”.

Income Tax Assessment Act 1997

14 Paragraph 202‑45(c)

Omit “that Act”, substitute “the *Income Tax Assessment Act 1936*”.

Schedule 2—Selective share cancellations

Income Tax Assessment Act 1997

1 At the end of section 202‑45

Add:

 ; (k) a distribution by a \*listed public company that is consideration for the cancellation of a \*membership interest in the company as part of a selective reduction of capital, including a selective reduction within the meaning of section 256B of the *Corporations Act 2001*.

2 Subsection 205‑30(1) (before table item 10)

Insert:

|  |  |  |  |
| --- | --- | --- | --- |
| 9B | the entity makes a \*distribution to which paragraph 202‑45(k) applies (consideration for cancellation of membership interest as part of selective reduction of capital) | an amount equal to the debit that would have arisen if:(a) the distribution were a \*frankable distribution equal to the one that would have arisen if the entity were not a \*listed public company; and(b) the distribution were \*franked at the entity’s \*benchmark franking percentage for the \*franking period in which the distribution was made or, if the entity does not have a benchmark franking percentage for the period, at a \*franking percentage of 100% | on the day on which the distribution is made |

3 Application of amendments

(1) The amendments made by this Schedule apply to a cancellation of a membership interest by a listed public company if:

 (a) both:

 (i) the cancellation is announced to the market at or before the time the cancellation occurs; and

 (ii) the cancellation is first announced to the market after 7:30 pm, by legal time in the Australian Capital Territory, on 25 October 2022; or

 (b) both:

 (i) the cancellation is not announced to the market, or the cancellation is first announced to the market after the cancellation occurs; and

 (ii) the cancellation occurs after 7:30 pm, by legal time in the Australian Capital Territory, on 25 October 2022.

(2) The cancellation is ***announced to the market*** if:

 (a) the rules of an approved stock exchange require the company to notify the stock exchange of the cancellation for the purpose of release to the market; and

 (b) notification of the cancellation is released to the market following such disclosure.