

EXPOSURE DRAFT

2022

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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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.	

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

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

7 3 Schedules

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9 repealed as set out in the applicable items in the Schedule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

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Off-market share buy-backs **Schedule 1**
Main amendments **Part 1**

1 **Schedule 1—Off-market share buy-backs**

2 **Part 1—Main amendments**

3 *Income Tax Assessment Act 1936*

4 **1 Section 159GZZZP (at the end of the heading)**

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

6 **2 At the end of section 159GZZZP**

7 Add:

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

10 **3 After section 159GZZZP**

11 Insert:

12 **159GZZZPA No part of off-market purchase price is a dividend if** 13 **the company is a listed public company**

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

18 **4 Subsection 159GZZZQ(3)**

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

20 **5 After subsection 159GZZZQ(3)**

21 Insert:

22 (3A) Subsection (3) does not apply if the buy-back is by a listed public
23 company.

24 **6 Paragraph 159GZZZQ(8)(aa)**

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

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Schedule 1 Off-market share buy-backs

Part 1 Main amendments

1 *Income Tax Assessment Act 1997*

2 **7 Subsection 205-30(1) (cell at table item 9, column headed**
3 **“If:”)**

4 Repeal the cell, substitute:

5

(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

6 **8 Subsection 205-30(1) (table item 9, column headed “A debit**
7 **of:”, paragraph (a))**

8 Repeal the paragraph, substitute:

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

11 (i) purchased the interest *off-market; and

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

14 **9 Subsection 205-30(1) (after table item 9)**

15 Insert:

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Off-market share buy-backs **Schedule 1**
Main amendments **Part 1**

- 9A (a) the entity purchases a *membership interest in itself; and an amount equal to the debit that would have arisen if: on the day on which the interest is purchased
- (b) the purchase is an *off-market buy-back; and (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
- (c) the entity is a *listed public company (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%

1 10 Application of amendments

- 2 (1) The amendments made by this Part apply to a purchase by a listed
3 public company if:
4 (a) both:
5 (i) the purchase is announced to the market at or before the
6 time the purchase occurs; and
7 (ii) the purchase is first announced to the market after 7:30
8 pm, by legal time in the Australian Capital Territory, on
9 25 October 2022; or
10 (b) both:
11 (i) the purchase is not announced to the market, or the
12 purchase is first announced to the market after the
13 purchase occurs; and

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Schedule 1 Off-market share buy-backs

Part 2 Other amendments

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

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

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

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

9 Part 2—Other amendments

10 *Income Tax Assessment Act 1936*

11 11 Subsection 6(1)

12 Insert:

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

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

17 12 Paragraph 6BA(6)(a)

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

19 13 Subsection 45D(2)

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

21 *Income Tax Assessment Act 1997*

22 14 Paragraph 202-45(c)

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

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Selective share cancellations **Schedule 2**

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:	on the day on which the distribution is made
		(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%	

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Schedule 2 Selective share cancellations

1 3 Application of amendments

- 2 (1) The amendments made by this Schedule apply to a cancellation of a
3 membership interest by a listed public company if:
4 (a) both:
5 (i) the cancellation is announced to the market at or before
6 the time the cancellation occurs; and
7 (ii) the cancellation is first announced to the market after
8 7:30 pm, by legal time in the Australian Capital
9 Territory, on 25 October 2022; or
10 (b) both:
11 (i) the cancellation is not announced to the market, or the
12 cancellation is first announced to the market after the
13 cancellation occurs; and
14 (ii) the cancellation occurs after 7:30 pm, by legal time in
15 the Australian Capital Territory, on 25 October 2022.
- 16 (2) The cancellation is ***announced to the market*** if:
17 (a) the rules of an approved stock exchange require the company
18 to notify the stock exchange of the cancellation for the
19 purpose of release to the market; and
20 (b) notification of the cancellation is released to the market
21 following such disclosure.