

Senate Economics Legislation Committee
Treasury Laws Amendment (2023 Measures No. 1) Bill 2023

ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: Schedule 4 and 5
Senator: Senator Andrew Bragg

Question:

Schedule 4

1. What are the large institutions that Schedule 4 affects?
2. Have you asked the companies that used this, whether they took up these buybacks?

Schedule 5

1. What are the circumstances wherein the ATO have ruled that a capital raising/franked distribution has not been addressed by Tax Alert 2015/2?
2. How will the ATO implement Schedule 5?
3. What does Schedule 5 do that the 2015 Tax Alert and subsequent rulings haven't done?

Answer:

Schedule 4

1. Schedule 4 applies to all listed public companies that conduct off-market share buy backs from their existing shareholders.

The ATO does not maintain a list of entities which have conducted off-market share buy backs.

However, we note that the complexities of these arrangements means most larger listed companies that propose an off-market buy-back will seek a ruling from the ATO to confirm the application of the market value, anti-streaming and anti-avoidance rules. These class rulings are published on the ATO legal database. Some recent examples include CR 2022/105 and CR 2022/110.

2. The ATO regularly engages with companies and their shareholders to confirm the tax treatment of their off market share buy-backs. As noted above, the ATO frequently issues class rulings in respect of these arrangements for large listed businesses. We only issue these rulings once we can confirm that the arrangement has been implemented in accordance with the description provided by the application which is usually after implementation.

Schedule 5

1. Two class rulings were issued following announcement of the measure, and reflecting the current state of the law, but noting the announcement of the measure and its potential application.
 - on 15 September 2017 CR 2017/78 was issued in respect of shareholders in Seymour Whyte Limited
 - on 30 September 2020 CR 2020/52 was issued in respect of shareholders in Zenith Energy Limited

Both class rulings related to the declaration of a dividend as part of an overall arrangement for the purchase of all shares in the companies as part of a take-over. In the circumstances of the overall arrangement, the Commissioner concluded it was not entered into for a purpose (not including an incidental purpose) of enabling relevant taxpayers to obtain a imputation benefit in the form of a franking credit.

2. The ATO currently engages with taxpayers on the taxation consequences of their capital management activities for both companies and shareholders through the provision of public advice and guidance, or private rulings.

As part of the ATO's commitment when implementing new laws we undertake engagement and consultation with stakeholders that are affected by new measures to identify the highest priority issues where taxpayers may require guidance from the ATO.

Following the passage of legislation we will consult with key stakeholders to confirm highest priority needs in relation to this measure. As we have been involved in consultation to date, we are already aware of the need for guidance on a number of issues including start-ups and dividend reinvestment plans. It is intended that public guidance will assist business to understand both the application of the law and also how they can obtain confidence that their arrangements will not be subject to compliance activity.

3. Taxpayer Alert 2015/2 explained that the ATO had concerns with arrangements where it appeared that franking credits were being released in an accelerated way with little or no change in the financial position of the entity.

While the Taxpayer Alert paused proliferation of the arrangements, some taxpayers and advisors contested the ATO position and indicated interest in implementing the arrangements.

It is likely that the announcement of the previous Government that there would be legislative change has also discouraged taxpayers considering entering this type of arrangement since 19 December 2016.