

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

Inquiry into Treasury Laws Amendment (2023 Measures No. 1) Bill 2023

Division: Corporate and International Tax Division
Topic: TLAB Measures No. 1 - Schedule 4
Reference: Written
Senator: Andrew Bragg

Question:

1. What are the large institutions that Schedule 4 affects?
2. Have you asked the companies that have used this mechanism, and whether those buy-backs were taken up?
3. Have you modelled what impact Schedule 4 will have on company tax raised from Australian companies in Australia?

Answer:

1. Schedule 4 applies to listed public companies. Off-market share buy-backs (OMSBBs) have mainly been used by a small number of large listed public companies in the mining, banking, and retail sectors.

Based on ATO class ruling data, 32 different companies have undertaken 47 OMSBBs since 2006-07. Companies that undertook OMSBBs in the most recent years include Westpac, JB Hi-Fi, Metcash, Commonwealth Bank, Woolworths and Caltex.

2. Treasury undertook public consultation on the Exposure Draft legislation from 17 November to 9 December 2022. Submissions were received from tax advisors that typically advise companies on the taxation consequences of participating in these transactions and from bodies representing shareholders. Under ASX Listing Rule 3.8A, listed companies must advise the market of details of share buy-backs, including the final outcome.

3. Treasury assumes that companies that would have otherwise conducted an off-market share buyback will now distribute excess retained earnings via on-market buybacks and special dividends. Treasury does not model any change to the value of company tax paid by these companies, since this is not a first order effect of the policy.

Consistent with historical data provided by the ATO, corporate shareholders of companies were not assumed to be significant participants in off-market share buybacks.