

**Senate Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
**TREASURY**  
**Australian Taxation Office**  
(Supplementary Budget Estimates November 2004)

**Outcome 2, Output 2.2.1**

**Topic: Off-market share buyback**

**Supplementary question on notice: Supp 9**

Senator **Murray** asked:

- a) Do companies proposing an off-market share buyback approach the Taxation Office for approval?
- b) If so, on what basis does the Taxation Office approve that a buyback does not breach the general anti-avoidance provisions
- c) Are the criteria available?

**Answer:**

- a) It is usual for companies contemplating an off-market share buy-back to request that the Tax Office provide Private Binding Rulings and Administratively Binding Advice in respect of the company; and Class Rulings on behalf of shareholders.
- b) The Tax Office is required to examine each proposal on its merits.

This requires an examination of all aspects of the buy-back against the income tax law, including Division 16K of the *Income Tax Assessment Act 1936* governing the effect of share buy-backs and the various anti-avoidance provisions found in the income tax law.

There are a number of cases in which the Commissioner has ruled that an anti-avoidance provision would apply to the relevant arrangement. Section 177EA of the *Income Tax Assessment Act 1936* is usually the provision involved.

- c) Section 177EA contains the criteria relevant to schemes to obtain franking benefits. The application of anti-avoidance provisions to particular schemes very much depends on the facts of each case, which makes it difficult to generalize. However, it may be said that section 177EA has been found to apply in many cases where a significant effect of an arrangement was to stream franking benefits preferentially to resident taxpayers and away from non-resident taxpayers.