

Received  
10 SEP 2007  
Board of Taxation

35 Veterans Parade  
Collaroy Plateau  
NSW 2097

6 September 2007

**Attention – Mr Vernon Joice**

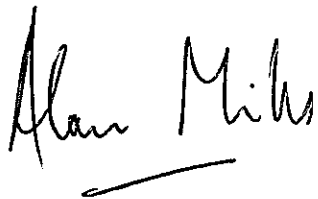
**The Board of Taxation**  
**c/o Treasury**  
Langton Crescent  
CANBERRA  
ACT 2600

**Dear Sirs**

With my apologies for my submission taking so long to reach you, but as arranged on the telephone earlier today with Mr Vernon Joice I enclose my one page submission of 6 May 2007 unamended except for its address.

Thank you for allowing it to be considered

Yours faithfully

A handwritten signature in black ink that reads "Alan Mills". The signature is written in a cursive style with a horizontal line underneath the name.

**Alan W. M. Mills**

6 May 2007

**The Board of Taxation**  
c/o Treasury  
Langton Crescent  
CANBERRA ACT 2600

Dear Sirs

**Off-market Share Buy-backs**

Those that would have us tire in our criticism of off-market share buy-backs need to explain three things –

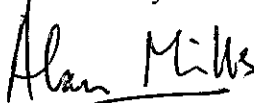
1. how they rest easy with the insanity of two Government Authorities contradicting each other over what is and what is not a dividend – one Government Authority must be wrong, and that is serious anarchy as it is not “living by the law”, the very basis of our civilization – I believe that in PS LA 2007/9 Section 59 where it says “and the balance of the purchase price is a dividend” someone is acting beyond their powers since only a Board of Directors, often with the support of the shareholders in a General Meeting, can declare a dividend for a company (also Section 159GZZZP of the ITAA 1936 surely realistically only applies to a “difference” that is an “excess, not a discount”?)
2. how they justify the unfairness of off-market share buy-backs to taxpayers generally – it is taxpayers generally who are funding the gifted non-payment of capital gains tax as a benefit to participating shareholders (who receive off-settable capital losses) – the Board of Taxation when it reports later this year is expected to announce a very large figure of several hundred \$millions, even \$billions, per annum of lost Government Revenue for this! and,
3. how they justify inflicting unfairness on non-participating shareholders who have had their share of their company’s franking credits given away to participating shareholders.

The solution to these three issues is of course very simple – just follow the old tax adage that “Substance always takes precedence over Form”. In other words sale proceeds on the disposal of a share can never be turned into a fully franked dividend at the stroke of a pen, nor at the whim of a legal draftsman.

If Form is ever allowed to take precedence over Substance our tax system will run riot – which is precisely why off-market share buy-backs in their current form should be outlawed. The payment of dividends to settle (in part) capital transactions is just the thin end of an illogical wedge which will only get worse if it is not “nipped in the bud” now. To not do so is to open the door for our tax system to lose touch with reality!

Those who have taken issue with off-market share buy-backs need to be applauded for seeking clarity where at present there is chaos and unfairness, and I for one hope they will not tire until sanity, fairness and a wholesome appreciation of reality return.

Yours faithfully

  
Alan W.M. Mills