

Off-Market Buybacks Scare Campaign

The Editor

Australian Financial Review

The scare campaign being mounted by Geoff Wilson against proposed changes to off market buybacks involving a claim that it is an attack on the imputation tax system, as reported by Chanticleer (8/12/22) is misguided. It appears to be based on the view that it is ok to use financial engineering to rort the tax system, for the benefit of a select few at the cost of the majority, and compromise the integrity of the imputation system. The possibility of a debit to a company's franking account balance (FAB) (which he claims to be a "sleeper clause" in the draft legislation) when an off-market buyback occurs, as is already the case for on-market buybacks, has economic credibility and legal justification. The mechanics are complicated but the debit is essentially aimed at preventing companies from distributing past profits in the guise of a capital item (and subject to preferential taxation) rather than as dividends which (adjusting for attached franking credits) would be taxed as income at the shareholder's marginal tax rate. The debit only occurs when the payment is made out of retained earnings rather than from the capital account (which records past injections of funds by shareholders). The Treasury proposal does not prevent companies distributing cash as pro-rata franked dividends nor using accumulated franking credits in doing so.

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