35 Veterans Parade
Collaroy Plateau
NSW 2097

24 September 2007

Attention – Mr Vernon Joice

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

Dear Sirs

Off-market share buybacks

I enclose two addenda dated 24 September 2007 to my final submission dated 20th September 2007.

Yours faithfully

Alan Mills

Alan W. M. Mills

Off-Market Share Buybacks **24th September 2007**

By Alan W.M. Mills, Collaroy Plateau, NSW 2097

<u>Two Addenda to my Submission dated 20th September 2007</u>

1) A first addendum to my comments regarding Sections 4.11 to 4.18 and Table 4.1 of the Board of Taxation's Discussion Paper of July 2007.

   With regard to the gifted capital losses, Table 4.1 needs to consider the most beneficial case for any participating shareholder, in other words the case where the gifted capital losses are highest.

   My current suggestion is that the most beneficial capital loss case for any participating shareholder may be column B (rather than S) but where the participating shareholder buys shares two days, say, after the announcement of the off-market share buyback when the share price on the ASX has risen a little. In the Table 4.1 example let us assume as suggested in Section 4.11 that the share price on the ASX has risen to $10.

   In column B of Table 4.1 the cost base would then be $10. The shareholder's capital loss before and after discount would be would be $7, up from $1; and the after tax value of the capital loss per share I presume would have risen from $0.465 to $3.255!

   Other people may be able to provide a still more beneficial example.

   Also I am conscious that what matters is the total amount in dollars of capital gains tax lost by the Government via off-market share buybacks rather than small individual dollar amounts with very high rates of return for participating shareholders.

2) A second addendum to my comments regarding Section 2.8, 3.22, 3.23, 3.49 and 4.1 of the Board of Taxation's Discussion Paper of July 2007

   With regard to the accounting issues referred to in the Discussion Paper I would suggest the following methodology –

   1 Recognise that an off-market buyback of shares is a capital transaction, and only a capital transaction, irrespective of what the Tax Law may say in ITAA 1936 section 159GZZZP. In other words no part of an off-market share buyback is a distribution and therefore ITAA 1997 section 202-45(c) is irrelevant.

   2 Revalue the to-be-bought-back shares in a company to their buyback price (which should be their market price) before they are bought back. In other

words credit the share capital account with an amount equal to the number of shares to be bought back multiplied by the excess of the buyback price per share over the cost per share. The debit for this revaluation could be charged to the current year's profit and loss account (before or after tax, in whole or in part – this is an issue for the ATO) or to the accumulated profits – this is an issue for the accounting standard setters.

3 Then to complete the buyback and cancel the shares merely debit the share capital account (and of course credit the cash payments account) with the cash payments made to participating shareholders selling their shares.

4 Following the completion of these accounting entries the share capital account would be accurately and correctly computed without the bought back shares. Each entry in the share capital account would be meaningful and the closing balance could be properly reconciled. In other words there would be no muddled or unclear "balancing" entry as apparently happens at present with buybacks.

5 The whole process would be very simple and easy.

The upshot of this approach would be that –

1 Capital transactions are correctly always capital transactions, never revenue transactions.

2 Vast tracts of the Tax Law could be ignored or cancelled or repealed.

3 The ATO and ASIC could act more harmoniously together.

4 Non-participating shareholders would not have been unfairly treated. The company's franking account would have to be reduced by paying fully franked dividends to <u>all</u> shareholders.

5 The Government's capital gains tax revenue would not have been reduced.

End