Submission From: Mr Mark Lyons

Submission to Better Tax ReThink Paper 2015 on Dividend Imputation, under Section 5 General business tax issues

On behalf of:

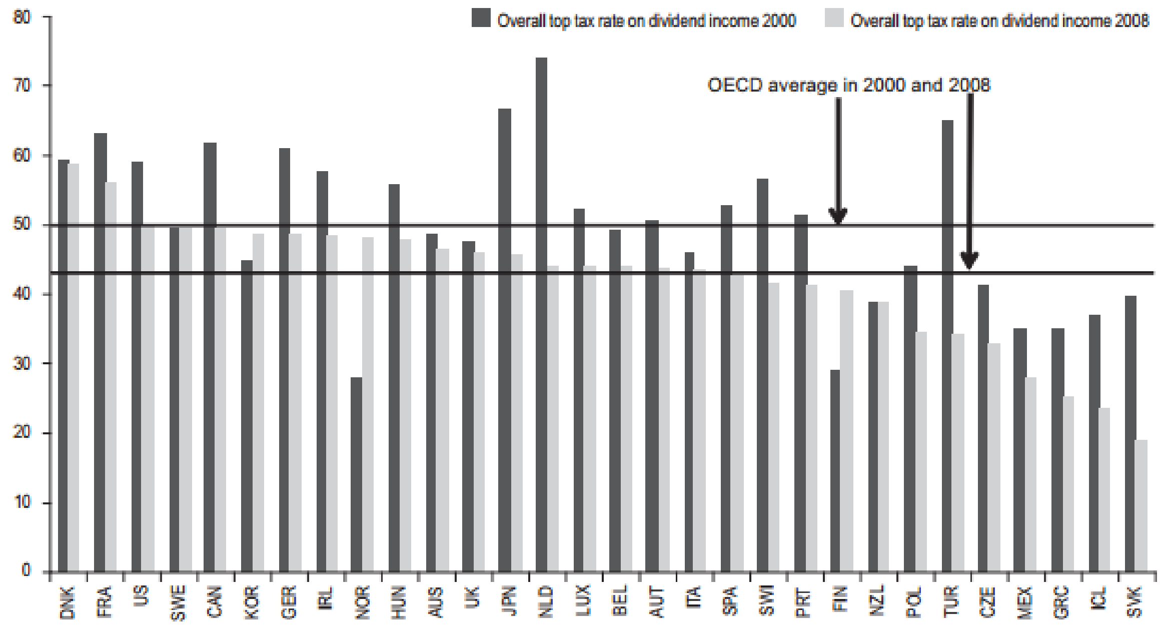
Mark Lyons and Ling-chia Hu private investors

Hu and Lyons Superannuation Fund

This submission makes only one point about one issue raised by the Better Tax , ReThink Paper 2015, discussed under Section 5 General business tax issues, dividend imputation and total rates of taxation on domestic shareholders and the international comparison. **The most problematic issue with removing dividend imputation altogether is that whatever is done the total overall top statutory rate of taxation on dividend income to domestic shareholders cannot drift further above the OECD average, It Is Not Low Taxing.** I believe that Treasury and the Better Tax ReThink paper have completely confused 2 totally separate issues, double taxation relief for domestic shareholders and the totally separate issue of refund of franking credits to superannuation funds that pay 0% tax rates in pension phase. These two issues must be separated and are not the same thing and cannot be included into one taxation change.

The comparison rates are taken from a 2008 study by the previous Treasury Tax Review and this 2015 Better Tax White Paper. Please see the international rates of top total "overall statutory rates on dividend income".
http://taxreview.treasury.gov.au/content/html/conference/downloads/conference_report/02_AFTS_Tax_and_Transfer_Policy_Conference_Chap_2.pdf

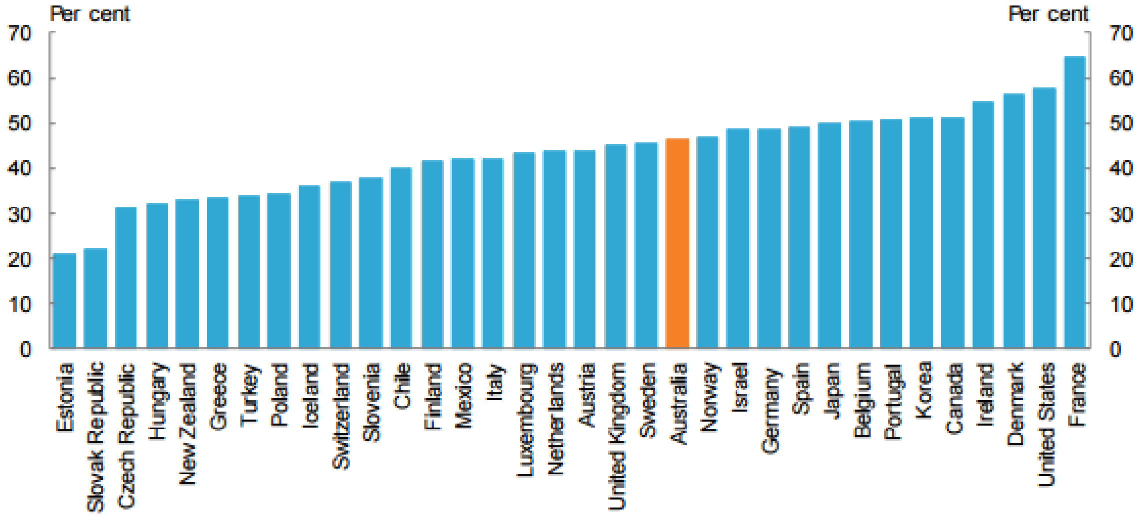
Figure 2.4 Overall Statutory Rates on Dividend Income, 2000 and 2008



Note: This tax rate is the overall (corporate plus personal) top marginal tax rate on distributions of domestic source profits to a resident individual shareholder, taking account of imputation systems, dividend tax credits etc.
Source: OECD (2008b).

http://bettertax.gov.au/files/2015/03/05_Business.pdf

Chart 5.6 Overall taxation (percentage) of resident individuals who receive dividends from domestic corporations in OECD countries, 2014



Note: Overall taxation comprises corporate and personal taxation of dividends. Assumes that the dividend is paid by a domestic company to a resident individual on the highest marginal rate. These rates do not include the Temporary Budget Repair Levy of 2 per cent or the 0.5 percentage point increase in the Medicare Levy Surcharge which took effect on 1 July 2014.
Source: OECD 2014, *Tax Database, Corporate and capital income taxes*, OECD, Paris, viewed 9 December 2014: www.oecd.org/ctp/tax-policy/tax-database.htm#C_CorporateCapital.

As can be clearly seen Australia is NOT a low tax country on the top rates of shareholder taxation on overall rates of dividend income taxation to domestic shareholders. It is a total misdirection to state that Australian double taxation relief (called imputation by Australia) for domestic shareholders is somehow almost unique, it is almost unique in name only, it is done in different ways in nearly all jurisdictions around the world, but the result is relief from impossibly high double taxation rates for the domestic owners of companies. In fact Australia as at 2008 had drifted above the OECD average. **The most problematic issue with removing dividend imputation altogether is that whatever is done the total overall top statutory rate of taxation on dividend income to domestic shareholders cannot drift further above the OECD average.** The alternative is that those on these top tax rates will fairly restructure their affairs against income tax and company tax in Australia. If dividend imputation were removed the total top statutory tax rate for Australians would be nearly 80%, nearly twice the OECD average and more than a third above the next highest taxing countries in the OECD, at around 60% overall statutory top taxation rate on dividend income. Even if the company tax rate was cut by 10% to 20% this would still see the top total tax rate to domestic shareholders being 70% in Australia over one and a half times the OECD average. This is simply an impossible situation that would see a taxation law that would be impossible to enforce as those subjected to it would rightly restructure their affairs and would be the ones with the most resources to do so. This would lead to a waste of resource not only for those individuals, but also the ATO and less, not more tax for Australia. Pursuing this will without some equalisation back to the OECD average in some other form will see a lose/lose situation for Australian individuals and government.

To quote from the Better Tax ReThink Paper itself, which shows clearly why Australian shareholders would be justified in restructuring themselves should dividend imputation be completely removed and only replaced with a company tax cut and removal of all other relief to domestic shareholders:

"This would mostly benefit non-resident investors as Australian company tax is often the final tax for these investors." Page 80.

For example: setting up a holding company in another jurisdiction that either has lower corporate tax rate or no capital gains tax, even New Zealand comes to mind with no capital gains tax on Australasian equities, then investing through this company rather than directly investing as an Australian resident. Many other options are available in even lower tax jurisdictions many without capital gains tax, this allows the investor to leave the income and capital gains accruing in the entity that is not the individual and therefore not subject to individual Australian taxation, and ironically nothing stops the investment being in the exact same Australian shares.

In New Zealand, you can form a business in a single day with minimal paperwork (two days in Australia).

In Singapore and Hong Kong, setting up a business involves three procedures which can be completed in three days.

Finally, I believe that Treasury and this paper have completely confused 2 totally separate issues, double taxation relief for domestic shareholders and the totally separate issue of refund of franking credits to superannuation funds that pay 0% tax rates in pension phase. These two issues must be separated and are not the same thing and cannot be included into one taxation change.

The government and Treasury should be very careful before they introduce the highest effective taxation rate for domestic capital investment in its companies in the world, it won't be tolerated and active restructuring measures will be taken in opposition to such a move, costing the government much more than it would receive. These measures are becoming increasingly easy in an online, globalised world.