28 May 2014

Ms Michelle Calder
Manager
Corporations and Schemes Unit
Financial System and Services Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: Corporations.Amendments@treasury.gov.au

Dear Ms Calder,

Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014 – amendment to section 254T

The Tax Institute welcomes the opportunity to make a submission to the Treasury in relation to the *Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014* Exposure Draft (**Exposure Draft**) which contains a proposed amendment to section 254T of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Tax Institute does not seek to make any comments on the corporations law implications from the proposed change to section 254T of the Corporations Act. Rather, The Tax Institute's comments are limited to the potential implications for tax law purposes that may flow from the proposed amendment.

The proposed change to when a company may declare and pay a dividend for the purposes of the Corporations Act will have implications that flow through to the tax treatment of the payment from a company and whether for tax law purposes the amount will be regarded as a dividend and therefore able to be franked.

The Australian Taxation Office (**ATO**) has issued its views on the taxation of dividends paid in compliance with section 254T of the Corporations Act in *Taxation Ruling TR 2012/5.* It is our view that the ATO will need to consider amending TR 2012/5 and/or providing new guidelines should the proposed amendments proceed. Guidance should cover whether the ATO's position in relation to the ability to frank dividends that are not paid out of profits is impacted.

In addition, the amendment is likely to result in an increase to the number of distributions in the form of capital returns for accounting and corporations law purposes. In this regard, if the proposals are enacted, it will be necessary for the ATO

Level 10, 175 Pitt Street
Sydney NSW 2000
Tel: 02 8223 0000
Fax: 02 8223 0077
info@taxinstitute.com.au
taxinstitute.com.au
ABN 45 008 392 372

to consider providing more guidance in relation to whether and, if so, how section 45B of the *Income Tax Assessment Act 1936* (Cth) (and other anti-avoidance provisions) will apply to dividends paid in accordance with the amended section 254T or the new section 254TA[1] of the Corporations Act.

We suggest that Treasury and the ATO consider establishing a working group to assist the ATO to reformulate its guidance in response to the proposed amendment as taxpayers will be looking to the ATO for this guidance should the amendment to section 254T become law.

Following this, it may also be necessary for Treasury to consider if section 45B may need to be amended as a consequence of the amendments to section 254T and section 254TA.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely

M. Flynn

Michael Flynn
President

[1] Which defines when a "dividend" arises from a reduction of share capital.