

# EXPOSURE DRAFT

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Inserts for

## **Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Franked distributions funded by capital raisings**

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### **Commencement information**

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**Column 1**

**Column 2**

**Column 3**

**Provisions**

**Commencement**

**Date/Details**

1. Schedule #

The first 1 January, 1 April, 1 July or  
1 October to occur after the day this Act  
receives the Royal Assent.

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## Schedule #—Franked distributions funded by capital raisings

### Part 1—Main amendments

#### *Income Tax Assessment Act 1997*

##### 1 After paragraph 202-45(e)

Insert:

- (ea) a distribution to which subsection 207-159(1) applies (distributions funded by capital raisings);

##### 2 After section 207-158

Insert:

#### **207-159 Distributions funded by capital raising**

- (1) This subsection applies to a distribution (the *relevant distribution*) of a kind made by an entity if all of the following conditions are satisfied:

- (a) either:

- (i) the entity has a practice of making distributions of that kind on a regular basis and the relevant distribution is not made in accordance with that practice; or

- (ii) the entity does not have a practice of making distributions of that kind on a regular basis;

- (b) there is an issue of \*equity interests in the entity or any other entity (whether before, at or after the time at which the relevant distribution was made);

- (c) it is reasonable to conclude having regard to all relevant circumstances that:

- (i) the principal effect of the issue of any of the equity interests was the direct or indirect funding of the relevant distribution or part of the relevant distribution;

or

- (ii) any entity that issued, or facilitated the issue of, any of the equity interests did so for a purpose (other than an incidental purpose) of funding the relevant distribution or part of the relevant distribution.

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1 *When an entity has a practice of making distributions of a certain*  
2 *kind on a regular basis*

- 3 (2) In considering whether the condition in paragraph (1)(a) is  
4 satisfied, take the following matters into account:
- 5 (a) the nature of distributions made by the entity before the time  
6 at which the relevant distribution was made (including the  
7 extent to which such distributions were a return on capital);
  - 8 (b) the timing of such distributions;
  - 9 (c) the amount of such distributions;
  - 10 (d) any explanations given by the entity for making such  
11 distributions;
  - 12 (e) the amount of the \*franking credits on, and the \*franking  
13 percentages for, such distributions;
  - 14 (f) any other relevant consideration.

15 *Distributions funded by issuing equity interests are to be*  
16 *disregarded in determining past practice*

- 17 (3) In considering whether the condition in paragraph (1)(a) is  
18 satisfied, disregard a distribution if:
- 19 (a) the distribution:
    - 20 (i) is a \*franked distribution; or
    - 21 (ii) would be a franked distribution if subsection (1) did not  
22 apply to it; and
  - 23 (b) subsection (1) would apply to the distribution if paragraph  
24 (1)(a) were omitted.

25 *When issue of equity interests has the effect or purpose of funding*  
26 *a distribution*

- 27 (4) In considering whether the condition in paragraph (1)(c) is  
28 satisfied, take the following matters into account:
- 29 (a) the extent to which the time (or times) at which any of the  
30 equity interests mentioned in that paragraph were issued  
31 differs (or differ) from the time at which the relevant  
32 distribution was made;
  - 33 (b) the extent to which the amount of the funds from the issue of  
34 any of those equity interests differs from the amount of the  
35 relevant distribution;
  - 36 (c) the extent to which the financial position of any of the  
37 following entities changed as a result of the relevant

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- 1 distribution (or any part of the relevant distribution) and the  
2 issue of any of those equity interests:
- 3 (i) the entity that made the relevant distribution;
  - 4 (ii) an entity that, before, at or after the time at which the  
5 relevant distribution was made, was a connected entity  
6 of that entity;
  - 7 (d) the use of the funds from the issue of any of those equity  
8 interests;
  - 9 (e) whether there are any reasons for the issue of any of those  
10 equity interests other than the funding the relevant  
11 distribution (or any part of the relevant distribution);
  - 12 (f) the extent to which the issue of any of those equity interests  
13 was underwritten (whether formally or informally);
  - 14 (g) other distributions (if any) made by the entity that made the  
15 relevant distribution (whether before, at or after the time at  
16 which the relevant distribution was made);
  - 17 (h) any other relevant consideration.

## 3 Application

- 18
- 19 (1) Subsection 207-159(1) of the *Income Tax Assessment Act 1997* (as  
20 inserted by this Schedule) applies to a relevant distribution mentioned in  
21 that subsection that is made at or after 12 noon, by legal time in the  
22 Australian Capital Territory, on 19 December 2016.
- 23 (2) Section 170 of the *Income Tax Assessment Act 1936* does not prevent  
24 the amendment of an assessment if:
- 25 (a) the assessment was made before the commencement of this  
26 item; and
  - 27 (b) the amendment is made within 12 months after that  
28 commencement; and
  - 29 (c) the amendment is made for the purpose of giving effect to  
30 this Part.
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1 **Part 2—Minor technical amendment**

2 *Income Tax Assessment Act 1997*

3 **4 Paragraph 202-45(c)**

4 Omit “that Act”, substitute “the *Income Tax Assessment Act 1936*”.

5 **5 Subsection 820-930(1)**

6 Omit “For the purposes of this Division and Division 230”, substitute  
7 “For the purposes of this Division, Division 230 and section 207-159”.

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