4th October 2022.

Director

Corporate Tax Policy Unit.

Treasury

Langton Crescent,

Parkes. ACT. 2600.

By email: frankeddistconsult@treasury.gov.au

Dear Director,

Thank you for the opportunity to submit a response to the consultation process on the proposed legislation relating to: **Franked Distributions and Capital Raising.**

We strongly object to the proposed legislation changes.

We believe the draft legislation is inequitable to Australian Companies and Australian Shareholders who invest in those Companies. This legislation could inadvertently impact on situations of legitimate company operations and investment decisions made by shareholders without prior knowledge.

It will also limit the funds shareholders may place with Australian Companies as there is a growing acceptance and easier facilitation of investing in Overseas Stocks as investor look to recover losses over the last few years of financial uncertainty.

The draft legislation fails to recognise the fundamental principle underlying the franking regime and the reason it was created, that is double taxation on Company Profits. We note as shareholders the total amount of our dividend and franking credits are regarded as taxable revenue.

The franked Distribution and Capital Raising draft legislation, if widely applied, will lead to the demise of the franking system. It will stop Australian Companies who issue shares under a Dividend Reinvestment Plan (DRP) from paying franked dividends on the total shareholding and significantly increase the cost of capital for all franked dividend paying Australian Companies. It will devastate the ASX Listed Investment Funds and Companies which hold large divestment in shares for Retirees and Pensioners that rely on stable dividend income. It will also risk the stability and integrity of the Australian Banking System by inhibiting effective raising of capital during challenging economic periods like the GFC, APRA (BASEL 1) raising the capital holdings, and more recently the coronavirus pandemic. Furthermore, the legislation does not restrict Companies from borrowing money and paying out dividends and franking credits. What's the difference between raising capital by borrowing or offering equity except the latter is looking after your valued shareholders.

If passed, the application of this legislation would also unfairly burden Australian Investors with retrospective tax debts, reduction of Company Profits thus less dividends, reduction of Share prices due to encumbrances and less attraction, thus reduction of investor capital all at a time of high economic uncertainty. This will also affect many small investors including families, pensioners and self-funded retirees in their survival and spending power.

In our own circumstances, as totally self-funded retirees for the last twelve years who due to extremely low interest rates have come to rely on share dividends for our sole income through a SMSF pension and individual portfolio's. Over the last two and a half years our portfolio balances have depleted by some 30% due to the economic times and inflation on basic commodities like food, appliance replacement, home energy and fuel is rampant. Unfortunately, our capital is above welfare levels although our income is diminishing below the welfare level given and we do not qualify for the discounts and privileges of pensioners. We have prided ourselves on being independent and wish to stay so. This legislation is reputed by the Treasurer to only yield about $10 million per year how much will he add to the welfare budget if people like ourselves spent our nest egg and go on welfare. It would save us a lot of work juggling our portfolios and guarantee a fortnightly income for the rest of our lives. If a lot of self-funded retirees who no doubt will be responding to this legislation as we have, decided it was better to go on welfare it would cost far more than $10 million per year and decimate the share market.

We are all for closing loopholes but franking credits are not a loophole as it seems that the Labor government wishes to think. The Government and Treasury should be aware that this legislation is bound to hurt only the little people as always it is the shareholder who is always at the end of the food chain. If the Government is looking to close loopholes look at the Multi-National companies which take their profits off-shore.

Although, the Government and Treasury have restricted the time available for a proper public analysis and have not considered all the likely repercussions by the nature and retrospectivity of this legislation. We trust that the Treasury exercise utmost due diligence in considering and reporting with the greatest of transparency all the unseen and unfair ramifications that this legislation could produce.

Sincerely Yours,

On behalf of Neil & Jill A

PS. Please note the attached notes regarding unintended consequences.

1. There would be unintended consequences based on the current drafting of the proposed legislation

As drafted, the proposed legislation does not sufficiently distinguish between acceptable activities and the tax avoidance situations it intends to address. The proposed legislation would appear to inadvertently impact situations of legitimate company operations and could accordingly delay or discourage the normal processes of capital raising, investment and economic growth in Australia and interfere with the operation and the efficiency of the Australian capital markets and the structural integrity of our banking system.

For example, irrespective of the various situations of legitimate capital management, capital raising and franked dividend payments by Australian companies, the draft legislation is broad enough that it could also capture the well-established act of implementing Dividend Reinvestment Plans (DRPs) and DRP underwritten capital raisings in the circumstances where, in Treasury's broad view, the established practice test is not met.

The current draft of the legislation will have severe impacts to our authorised deposit-taking institutions (Australian banks) and would be contrary to the Australian Prudential Regulation Authority's (APRA) guidance provided in the most recent time of economic stress during the COVID-19 pandemic.

In April 2020, APRA provided guidance to all authorised deposit-taking institutions, primarily impacting Australia's big four banks, on capital management. This guidance included an expectation that Boards would seriously consider deferring decisions on dividends given the economic uncertainty due to the coronavirus pandemic. It would also offset any dividends to the extent possible through other capital management initiatives, including DRPs and other capital raising initiatives to partially offset the diminution in capital from the payment of franked dividends to shareholders. As Australia moved beyond the initial phase of response, APRA updated the guidance to assist longer-term capital management enabling banks to fulfil their role in supporting economic recovery. As part of this, APRA recommended they actively used DRPs "and/or other capital management initiatives" to offset the reduction in their capital base and balance sheets from making franked dividend payments to their shareholders. The proposed drafting of the legislation changes will risk the stability of the Australian banking system by inhibiting effective capital management during challenging economic times.

2. Managing cash flows between capital raising and distributions can represent the normal and legitimate flow of commercial capital management

The drafted legislation removes the ability of operating businesses to legitimately manage and invest their cash flows productively. Once a company has generated a profit and reinvested it, it can only create liquidity to pay a dividend by raising debt, selling some of its assets (which might not be viable) or by raising capital. By removing the ability to raise capital to reward shareholders, companies will need to increase their debt levels or they will be put in a position where they will be unable to grow and further develop their businesses. While there are instances of companies manipulating the tax system, companies that have legitimately earned profits and paid tax should be entitled to choose how they invest or distribute those profits to their shareholders.

3. The proposed legislation would burden thousands of Australian shareholders who have planned or are planning their retirement, placing stress on individuals and on the Australian pension system

The dividend imputation system has not fundamentally changed for over 20 years and implementing change now, and retrospectively, on people who are already retired and, in many cases, cannot return to work, will burden individuals, their families and in turn the economy, all of which will face economic uncertainty.

4. Retrospectively

[I/We] note the retrospective application to 19 December 2016 would unfairly prejudice franked dividends paid out to shareholders of Australian companies and leave them with unexpected tax bills for dividends they have since received, to be paid at a time of economic uncertainty. This is particularly concerning for those who rely on fully franked dividends as income.

The draft legislation appears to inadvertently target situations of legitimate company operation making it difficult to form a conclusive judgement as to the legitimacy of historical and future payments of fully franked dividends by Australian companies.

Tax laws should not be allowed to change retrospectively when Australians have budgeted for and paid their lawful tax assessment based on existing tax law in place.

Conclusion

While [I/we] appreciate Treasury is trying to deal with situations involving tax avoidance and franked dividend distributions, the proposed legislation, as drafted, will fundamentally change the nature of how Australian companies manage their capital, increase their cost of capital and negatively impact Australian shareholders.