



**independence
matters**

Association of
Independent Retirees

Submission to Treasury

TREASURY LAWS AMENDMENT (MEASURES FOR A LATER SITTING) BILL 2022

Franked dividends funded by capital raisings

Comments and responses on the Exposure Draft Legislation and related Explanatory Materials

October 2022

Introduction

Who is the Association of Independent Retirees (AIR)?

The Association of Independent Retirees (AIR) Limited is a national advocacy organisation representing current and future partly and fully self-funded retirees. AIR works to advance and protect the interests and independent lifestyle of Australians in or approaching retirement.

AIR seeks to secure recognition and equity for Australians who, through their diligence and careful management, fully or partly self-fund their own retirement needs.

Context for our submission.

A significant proportion of fully and partly self-funded retirees or those who plan to be, own shares and receive franked dividends. These shares are owned directly, or indirectly through their Managed Funds, SMSF or APRA regulated Superannuation Funds, etc.

They receive franked dividends or distributions from these shares or managed fund units that contribute significantly to their retirement income.

The majority of full and partly self-funded retirees would be classified as retail investors and would not directly participate in corporate capital raisings targeted at wholesale or sophisticated investors.

Retirees may through their ownership of units in managed funds, listed investment companies or superannuation funds indirectly benefit from share issues related to corporate capital raisings.

Summary of issues related to the proposed Treasury Laws Amendment (Franked dividends funded by capital raisings):

1. **Section 207-159** which outlines considerations, where the issue of equity has the purpose and/or effect of funding a distribution, are **too broad in respect to partial funding or unrelated capital raisings**.
2. The **additional costs of compliance** checks on capital raisings, equity issues and the funding of distributions will considerably outweigh the tax revenue earned.
3. The **retrospective application of the integrity measure**

Comments related to the Amendments to the Income Tax Assessment Act 1997

Sections 202-35 and 45

We note and understand that the object of the frankable distribution rules is to ensure that only distributions **equivalent to realised profits can be franked** (section 202-35).

We also note that a franking entity **cannot frank a distribution if it is an un-frankable** distribution under section 202-45.

We note that in section 202-45, paragraph (e) **‘distributions funded by capital raisings have been added to the list of un-frankable distributions.**

Section 207-159 Distributions funded by capital raising

This section describes the circumstances under which the nature of distributions, issue of equity and funding of relevant distributions are considered linked and the purpose and effect of the issue of equity was to directly or indirectly fund all or part of a relevant distribution.

Issue: The significant **reliance on established practice** in making distributions **does not provide sufficient discretion** for an entity to change the nature of distributions **due to extraordinary financial circumstances.**

Rationale: Changes in franked distributions occurred with a number of financial institutions during the covid-19 pandemic with the support of APRA and in conjunction with capital raisings through the issue of share equity.

These circumstances were not associated with tax avoidance or manipulation of the franking system but a response to extraordinary economic circumstances for financial entities and their shareholders.

The legislative tests do not contemplate the need for entities to react to challenging corporate circumstances that require unusual capital raising, equity issue and franked distributions.

Issue: The testing of the linkage between the funds raised through issue of equity at a different time and in different amounts to a relevant franked dividend is too broad.

Recommendation: If part of the funding of a franked distribution is linked to some of the capital raised via an equity issue, then **the distribution should be partly franked not entirely unfranked.**

Additional costs of compliance

Issue: The ongoing additional costs of compliance checks by franking entities and government resources on capital raisings, equity issue and the funding of distributions could considerably outweigh the additional tax revenue gained by this measure.

Application of the Integrity measure

Issue: The retrospective application of the integrity measure

When this integrity measure was announced in the 2016-17 Mid-Year Economic and Fiscal Outlook, it was intended for the measures to take effect on 19 December 2016.

It was likely anticipated that these amendments to the legislation would have been progressed in a timely fashion, but unfortunately this has not been the case.

Nearly 6 years on, the back-dated application of this integrity measure to the 16th December 2016:

- will adversely affect those entities that have made affected distributions or capital raisings
- will cause considerable concern by direct and indirect recipients of franked dividends since the 16th December, 2016
- requires significant effort and cost by government to reassess capital raisings and equity issues since the 16th December, 2016 to ensure these integrity measures have been complied with

Direct or indirect recipients of franked dividends or distributions would not have the necessary documentation from the franking entities to determine whether the distributions were funded by capital raisings and the issue of equity interests, but could have their distributions re-assessed as un-frankable after they have received them.

The effort, costs and angst experienced by franking entities, recipients and government staff resulting from the retrospective application of this measure will likely greatly exceed the anticipated modest revenue gained.

Recommendation: That this measure should apply from the day after royal assent of the bill or the 1st July following the royal assent.