

Director
Corporate Tax Policy Unit
Treasury
Langton Cres
Parkes ACT 2600
By email: frankeddistribconsult@treasury.gov.au

4 October 2022

Dear Director,

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

Specifically, I object to the application of this policy change back to 2016. As an investor, I had no input into the capital raisings that generated these special dividends and have paid my taxes and managed by income based on the applicable legislation.

Much has happened since 2016. My mother has died and her estate, including investments, has been fully distributed.

The franked credits I received since 2016 have been utilised in paying off expenses as both myself and my husband are self-funded retirees. Having an additional tax bill based on a retrospective policy change when we paid our taxes each year under the rules that applied at the time will only add financial stress to our situation.

By applying this policy change retrospectively, the Albanese government will add more cost pressure to households already struggling. This is not what was expected or wanted when we voted for your government and smacks of a 'robodebt' debacle in the making.

I am concerned from what I have read in the financial press that the Franked Distribution and Capital Raising draft legislation, could lead to the demise of the franking system. It will stop Australian companies who issue new shares under a Dividend Reinvestment Plan (DRP) from paying franked dividends and significantly increase the cost of capital for all franked dividend paying Australian companies. The appeal of Australian shares will be severely reduced as an investment avenue for individuals, superannuation funds and corporates if this type of retrospective taxation policy change is allowed to occur.

As stated in the SMH on 26th September 2022, "The policy, which has been put out for consultation, seeks to stop companies from paying fully franked dividends from the proceeds of an equity raising. It wants to stop companies from raising funds for the express purpose of giving it back to shareholders with a franking credit attached – and it proposes to do this retrospectively.

But there were a number of companies that raised capital during the COVID-19 pandemic only to later return it to shareholders when the impact of the pandemic was less than anticipated. These instances did not appear to be an artificial means to stream franking credits."

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.

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 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.

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.

If passed, the application of this policy would unfairly burden Australian investors with retrospective tax debts, to be paid at a time of economic uncertainty and not matched by any corresponding income.

I urge the Treasurer and the Government not to proceed with this flawed policy and its retrospectivity which will be to the financial detriment of ordinary Australians.

Yours sincerely,

Ursula Bonzol