

Director
Corporate Tax Policy Unit
Treasury
Langton Cres
Parkes ACT 2600

A Submission in Respect of Proposed Legislation to amend the taxation law to prevent certain distributions that are funded by capital raisings from being frankable.

The Proposed Changes should not be Retrospective

The Treasury website overviews the proposed changes to taxation laws advises... 'As part of the 2016-17 Mid-Year Economic and Fiscal Outlook, an integrity measure was announced to prevent the distribution of franking credits where a distribution to shareholders is funded by particular capital raising activities.'

This announcement on a fair and reasonable basis in law has clearly lapsed, given the significant passage of time (many years) from then to now. The proposed legislation should apply only from when it is enacted.

Given the many years involved, there is likely many distributions that have occurred over this lengthy period that could be considered as falling under this legislation, were it allowed to apply from the 2016-17 financial year. It would cause considerable injustice to require such funds to be returned to Treasury especially where they have been consumed in ordinary daily expenses by ordinary citizens and in particular should they have been distributed through deceased estates (as will have surely occurred).

Application of the new Law should be more clearly defined to ensure that all proposed conditions must be precedent for the Law to apply.

The Explanatory Materials provided do not make it explicitly clear that all proposed conditions must be precedent for the Law to apply.

The conditions are outlined as follows:

The amendments provide that a distribution by an entity is funded by capital raising if:

- the distribution is not consistent with an established practice of the entity of making distributions of that kind on a regular basis;
- there is an issue of equity interests in the entity; and
- it is reasonable to conclude, having regard to all relevant circumstances, that either:
 - the principal effect of the issue of any of the equity interests was to directly or indirectly fund all or part of the distribution; or

- an entity that issued or facilitated the issue of the interests did so for a purpose of funding all or part of the distribution.

This is poorly drafted and should be improved. If the intent is otherwise then this should be announced.

This is the full extent of the concerns I have with the proposed legislation and would ask for them to be duly considered.

Yours sincerely

A handwritten signature in blue ink, reading "Andrew Kim Collard". The signature is written in a cursive, flowing style with a large initial 'A' and 'K'.

Andrew Kim Collard