

5 October 2022

Director
Corporate Tax Policy Unit
Treasury
Langton Cres
Parkes ACT 2600

By email: frankeddistconsult@treasury.gov.au

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.

I object to the proposed legislation changes. I believe that the draft legislation is inequitable to Australian companies and shareholders and that it could inadvertently impact situations of legitimate company operations.

The draft legislation fails to recognise the fundamental principle underlying the franking regime and the reason for its creation, the avoidance of double taxation on company earnings. 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 which 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. If passed, its application would also unfairly burden Australian investors with retrospective tax debts, to be paid at a time of economic uncertainty.

The problem seems to be largely one of the Commissioner's own making in relation to selective share buybacks. A selective share buyback is essentially a capital reduction, and should not be allowed to include a franked component disguised as a dividend when it is not a dividend at all. It is simply part of a scheme for the streaming of franking credits, and another example of the problems which have arisen from the abolition of the doctrine of maintenance of capital.

Yours sincerely

Gordon Elkington