

Director
Corporate Tax Policy Unit Treasury
Langton Cres
Parkes ACT 2600

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 the draft legislation is inequitable to Australian companies and shareholders and it could inadvertently impact situations of legitimate company operations.

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. It appears to impact legitimate company operations and might delay or discourage normal capital raising activities, investment in the Australia and impact the efficiency of Australian capital markets.

Eg, the draft legislation is broad enough that it could capture the well-established act of implementing Dividend Reinvestment Plans (DRPs) and DRP underwritten capital raising. The draft legislation could have severe impacts to Australian banks and would be contrary to guidance specifically provided by APRA during the COVID-19 pandemic.

The draft legislation also removes the ability of businesses to legitimately manage and invest their cash flows productively. Once a company has made a profit and reinvested it, it can only create liquidity to pay a dividend by raising debt, selling some of its assets or by raising capital.

By removing the ability to raise capital to reward shareholders, companies will either need to increase their debt or choose to not grow and further develop their businesses. While some companies have manipulating the tax system, companies that have legitimately earned profits and paid tax should be able to choose how they invest or distribute those profits to shareholders.

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 while we face increased economic uncertainty.

I also note the retrospective application to 19 December 2016 would unfairly prejudice franked dividends paid out to shareholders and leave them with unexpected tax bills. 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.

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.

While I understand Treasury is trying to deal with situations involving tax avoidance, the proposed legislation will fundamentally change the nature of how Australian companies manage their capital, increase their cost of capital and negatively impact Australian shareholders.

Yours sincerely,

Oliver Jones