

The Director  
Corporate Tax Policy Unit  
Australian Treasury  
Langton Crescent  
Parkes  
Canberra ACT 2600

Dear Sir/Madam,

I appreciate the chance to make a submission to you on reported changes to both Franked Distribution and Capital Raising draft legislation that I fear will cause the destruction of the franking system and destabilise investment in Australia. Most of my journalistic career was divided between the realms of Finance and Political Reporting with the ABC and AAP-Reuters Economic Services which make me more cynical than the average Australian. So when the now Prime Minister promised, before the election, that he would not change the laws on Franking Credits I reached for a pinch of swallowable salt.

Hence, I am not surprised to hear that changes are being proposed and wish to lodge my strong objection to amendments that are inequitable to ASX listed companies and the share-holders who own them; me included.

This proposition reinforces the old quote; "never stand between a politician and bucket of money".

As a self-funded retiree, I am concerned at public comments that these amendments will stop Australian companies who issue new shares under a Dividend Reinvestment Plan from paying franked dividends and therefore greatly lift the cost of capital for all franked dividend paying Australian companies. I currently use the DRP system to gently expand our retirement funds, but as our cash diminishes we will stop taking them up, and take the cash. We will eventually have to start selling shares to fund our modest lifestyle. One day I may be reliant on your Department to live. How soon that is up to you!

If thousands of other retired couples follow suit, the economy is in strife; a trouble generated by insensitive, grasping politicians and bureaucrats.

These COVID affected years of economic uncertainty are the worst time to rock the boat of the Australian banking system and institutions crucial to effective capital raising. Federal Treasurer Dr James Chalmers in an acolyte of former Prime Minister Keating who recognise the fundamental principle of the franking regime and the reason why he oversaw its creation; the avoidance of double taxation on company earnings

I hope talk of retrospectivity goes not further.

Retrospectivity is un-Australian. T

Treasurer Howard tried it 40 years ago and lost government at the 1983 election! Bill Shorten refused to be honest with the Australian people at the 2019 election and saw

the top job evaporate from his hand. He sought to divided older and younger Australians, but younger Australians realized that robbing the parent robs the child.

On Christmas Day, please discuss my thoughts with your older relatives over the turkey and pudding and listen to what they say. I hope all the family has a Merry Christmas Day!

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Yours sincerely,

Bob Lawrence

### **1. 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. 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 and interfere with the operation and the efficiency of the Australian capital markets and the structural integrity of our banking system.

For example, irrespective of the various situations of legitimate capital management, capital raising and franked dividend payments by Australian companies, the draft legislation is broad enough that it could also capture the well-established act of implementing Dividend Reinvestment Plans (DRPs) and DRP underwritten capital raisings in the circumstances where, in Treasury's broad view, the established practice test is not met.

The current draft of the legislation will have severe impacts to our authorised deposit-taking institutions (Australian banks) and would be contrary to the Australian Prudential Regulation Authority's (APRA) guidance provided in the most recent time of economic stress during the COVID-19 pandemic.

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 updated the guidance to assist longer-term capital management enabling banks to fulfil their role in supporting economic recovery. As part of this, 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.

## **2. Managing cash flows between capital raising and distributions can represent the normal and legitimate flow of commercial capital management**

The drafted legislation removes the ability of operating businesses to legitimately manage and invest their cash flows productively. Once a company has generated a profit and reinvested it, it can only create liquidity to pay a dividend by raising debt, selling some of its assets (which might not be viable) or by raising capital. By removing the ability to raise capital to reward shareholders, companies will need to increase their debt levels or they will be put in a position where they will be unable to grow and further develop their businesses. While there are instances of companies manipulating the tax system, companies that have legitimately earned profits and paid tax should be entitled to choose how they invest or distribute those profits to their shareholders.

## **3. The proposed legislation would burden thousands of Australian shareholders who have planned or are planning their retirement, placing stress on individuals and on the Australian pension system**

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 of which will face economic uncertainty.

## **4. Retrospectively**

[I/We] note the retrospective application to 19 December 2016 would unfairly prejudice franked dividends paid out to shareholders of Australian companies and leave them with unexpected tax bills for dividends they have since received, to be paid at a time of economic uncertainty. 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 by Australian companies.

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.

## **Conclusion**

While [I/we] appreciate Treasury is trying to deal with situations involving tax avoidance and franked dividend distributions, the proposed legislation, as drafted, will fundamentally change the nature of how Australian companies manage their capital, increase their cost of capital and negatively impact Australian shareholders.

