

**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 the draft legislation is inequitable to Australian companies and shareholders and 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 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. It will also risk the stability and integrity of the Australian banking system by inhibiting effective capital raising during challenging economic periods such as the start of the coronavirus pandemic.

If passed, its application would also unfairly burden Australian investors with retrospective tax debts, to be paid at a time of economic uncertainty.

[Add your own story if you wish and I have]

Yours sincerely,

Alan Loble

Email as above on sent email

I put this first as I feel strongly about this ridiculous change of laws and the even more ridiculous attempt to back date it to Labor's election that they couldn't lose **BUT** did due to the very same piece of legislation – do politicians ever learn???? I also wanted to make sure it was seen and not be just another template complaint!!!!

5. Superannuation tax limit 15%(?)

I paid 15% tax when I invested money in my superannuation scheme, 15% when my superannuation received increased benefits (I believe) during my accumulation phase.

I strongly object to Labor changing any rules relating to the distribution of Franking Credits, in the last election Labor said they were gifts not tax but clearly they are a part of my dividend payments and are clearly marked on the document I receive, as they are the result of the company paying taxes at 30% (usually).

As a tax payer I was required to add the dividends to my income and then allowed to add the franking credits to my tax assessment – if the total tax assessment was higher, then I paid this greater amount and if smaller a refund was given. Has this changed for taxpayers? I think not.

I am still a tax payer but thanks to legislation it is deemed that I pay no tax, so I can reclaim all of MY franking credits that the company has paid on my behalf.

If you propose to take my franking credits away then I will be in fact paying 30% tax from dollar 1 and I feel tis is utterly unfair as the 'normal tax system' has a lower limit of earnings where no tax is paid, then a sliding scale where more tax is paid according to how much is earnt. Then there are deductions for money paid out in order to earn your income – these no longer exist for me. I still have to pay them but cannot recoup them.

Also, as a result to tax law changes it was deemed that people with more than \$1.6 M in their superannuation had to return that money above this figure to their accumulation phase – **WHERE** they **pay 15%** on earnings **not 30%**. This seems to me, that the 'normal tax system' has been reversed, the more money you have and hence earn the less tax you have to pay.

HOW can you explain and support this?

The only benefit I currently get from Government is being able to claim Medicare, although I do not pay any money for this privilege BECAUSE I don't pay any tax. I would be more than happy to pay the 2.5% tax or even 5% so that I would help to pay for those who don't earn as much **BUT** if people with more money/earnings than me pay only 15% the it is immoral and Labor should be ashamed to say they support the people – I am a person and have paid my taxes, without the benefits of negative gearing and other schemes available to more wealthy individuals and families.

LIKE Albo, I can say I know about lone parenting, I have been a lone father for the last 40 years and it was not easy. The mother still collected the child endowment and when I asked for maintenance payments, which she certainly would have received – I got nothing. I did however have a wonderful mother who helped enormously until she died when my daughter was 12 and then I took care of my aging and unwell father as well as my daughter. The one thing that was always true you can't take a young daughter out with the boys but the girls are always more accepting.

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.