

Submission - Franked distributions and capital raising

We wish to make a submission in relation to the above Government Proposal

We, now in our early '80's. are directors of our corporate trustee company as trustee for our Self Managed Super Fund, which is currently worth about \$1m. We are both in Pension Mode. For many years we have enjoyed the benefits of the fund's tax-free status in regard to franking credits and, in particular, we have taken part in share buyback schemes initiated by various Australian leading companies such as Westpac, Woolworths, BHP and so on.

We are most concerned with the recent announcement by the Treasury that they had prepared "exposure" draft legislation on a measure related to the eligibility of franking credits in certain circumstances. These measures were originally included in outline form in the 2016-17 Mid year Economic and Fiscal Outlook.

Our concerns are:-

1. Retrospectivity

If implemented as planned, the legislation will retrospectively apply to any events that are covered by the new legislation that have occurred since 19 December 2016. This means that the law has in effect been in place since December 2016, even though the law has never been properly defined and has never come before the Parliament. Irrespective of the logic or otherwise of the intended legislation, the fact that individuals or entities affected can now be held liable for repayment of franking credits they may have received as far back as 2016 is quite unfair.

In our view this move towards the ability of the Parliament to apply laws retrospectively in this way is a real threat to the Parliamentary process and should be firmly resisted.

2. Lack of Clarity

The detail of the legislation has never been, and is still not, properly defined and its scope is still to be revealed. A specific example of how an as yet undefined law could be used to "sweep up" past events, is the MTS off market buyback which took place in August 2021. This was covered by an appropriate ATO tax ruling and franking credits attached to the buyback were refunded in the 2022 tax year. However, MTS had, in May 2020, raised \$300m in a capital raising. Under the proposed legislation does an interval of about 15 months separate the two events, or will the franking credits attached to the August 2021 buyback be defined as invalid and therefore subject to refund by the tax payer - despite the ATO Ruling on this buyback?

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