

5th 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 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.

My parents are in their mid 70s and fully retired and they rely solely on dividends from share investments for their income. They do not have any Age pension or other Commonwealth Benefits to support them. This change is potentially devastating to their financial situation. My mother has just had a hip replacement and my father has type 2 diabetes and sleep apnoea (needing a CPAP machine to breathe at night). The impact of this change is having a great impact on their anxiety and stress levels (already elevated due to the pandemic). How can they be expected to know how much of their income would need to be repaid and on what timeframe? This is grossly unfair.

I too, as a mother out of the full time workforce while my child is in her early years, rely on dividends as income to pay my bills. With cost of living rising every month, I now have only just enough to contribute my half to my family's income while my child is not yet in primary school. How much of my income will be lost to this change? How could I even know or plan for this? The value of my investments (that I worked many long hours and so hard for in my 20s and 30s so that I could take time off work to give my child more quality time in the crucial early years) has reduced by more than

one third in the past 2 years and now this change means my income is more uncertain than ever. Should I reduce her hours of early education to pay for this? I am disgusted by your government making me even consider this. This is another example of the Albanese Labor government's attack on franking credits and trying to disadvantage me and my family. You say you value hard work and everyone trying to get a fair go. I don't see how this is rewarding me for my hard work. I sacrificed a lot to have an income while I was not working so I could spend more time with my child while she is young. It cost me more than \$50,000 in IVF treatment to have her. The retrospectivity of this change is completely unacceptable. All this anxiety and stress for a measly \$10million a year in savings. I don't see how this is not another attack on anyone who has tried to reduce their reliance on government benefits by working hard to provide for themselves. It just doesn't make sense. It is poor quality legislation which will not help the Budget only anger the voters.

I strenuously object to the proposed franked distributions and capital raising legislation change.

Yours sincerely,

Tiffany Rensen

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 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 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.