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. We object to the proposed legislation changes.

We 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.

We are a family of three, 79 and 80 and have an adult child of 46. We are self-funded retirees and have both worked all our lives without asking or accepting any Government benefit until several years ago when we qualified for the Commonwealth Seniors Health Card. Our son worked until 40 but has developed serious incurable medical (very difficult to control diabetes resulting in amputation) and mental health problems and is now on a Disability Support Pension. We support him to keep a roof over his head and with his medical bills. We are not rich and over the last 18 months both of us have lost over two years' income from our super pension fund because of the state of the stock market and compounded by the steeply rising cost of living. If this legislation goes ahead we will very soon become eligible for an aged pension which we have worked hard to avoid. Any tax clawed back by the Government from this retrospective legislation will be far less than the social security costs they incur for our family in the future.

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.

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.

Retrospectively

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 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.

Yours sincerely,

Michael Sherriff **Lorraine Sherriff**