

**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/we] object to the proposed legislation changes.

[I/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.

I am a 67 year old Self funded retiree who has worked and paid taxes (still doing so) for 50 plus years who enjoyed a successful and in most part professional life which enabled me to self fund my current semi retirement. During the course of my life I will have paid on my calculation upwards to \$2M or more in personal taxes.

My personal aspiration is to never be a burden on fellow taxpayers and never rely on social payment, ie old age pension, despite my disposable income and that of my wife, only being a small fraction of what a full time politician makes per annum.

My observation over the last decade is that Governments (predominantly Labour) have been relentless in attempting to alter legislation that affects adversely superannuation of those that are self funded. Perhaps we are viewed as the invisible soft targets.

Yes, I worked for multi nationals through out my career without whom the Country would be broke. They pay decent wages/salaries and collect payee tax for the Govt as well as pay the Corporate tax

and other state taxes associated with being an employer. Take the multi national sector out of the mix and the Country would be in dire straights and a take over target for a predator wealthy country. The Government would be very small and the nation defenseless.

We have corporate tax laws in place and it is up to the Tax Office to enforce. If Company's are dodging their tax obligations, the tax office should do what they do to citizen individual tax payers and follow up and apply tax law for recovery, supported by the rule of law.

I object strongly to the proposed legislation based on the key points below due to the adverse and unfairness impact it would have on Self funded retirees who entered their current stage of life with the decisions they made based on the legislation of the day. What else could the Govt reasonably expect them to do.

Now talking of retrospective arrangements and altering the integrity of the fiscal systems historically put in place by which individual decisions were dependent, is unfair and un-Australian in my view.

Yes managing the pandemic was costly and all political persuasions agreed were necessary to get us through. The Treasurer Chalmers platform is to increase spending!

Individuals such as my self have had the discipline to treat money carefully and not waste it, that cannot be said of Govts (State and Federal) who have wasted beyond measure with little to no accountability.

Yours sincerely,

Peter Smithard

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.