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 100% object to the proposed legislation changes for the reasons below.

We believe the draft legislation is inequitable to Australian companies and shareholders and it could inadvertently impact situations of legitimate company operations.

Having saved and planned for retirement instead of spending our money on a self-indulgent, extravagant lifestyle, and not taking a taxpayer funded government pension from younger taxpayers, who are at a different, high expenses stage of life, **we are very angry that yet again the Labor government is targeting older independent Australians in their tax policy.**

It is impossible to plan for retirement purely because of government policy and the fact that the superannuation rules constantly change - this time through dividend rules - even for people already in superannuation retirement phase.

It is absolutely despicable and UNDEMOCRATIC that the Labor government can even suggest backdating these changes to 19th December 2016! Labor was NOT in power over that time and you have NO moral right to be **overriding the government of the day.** Where will this end?

Independent retirees don't just wait for money to be magically deposited into our bank accounts each fortnight out of the public purse, like government/public service/ politician pension recipients do, who don't have any worries about a continual income, **we must work at investing to make sure we have an income right up till the day we die! We have no other earnings. And for this we are punished and asked to jump through hoops that change from year to year. The treatment given to us is highly inequitable compared to other groups.**

When we deposited money in super we expected a tax rate **of 0% in retirement LIKE ALL OTHER PENSION RECIPIENTS as a reward** for not being able to spend our money immediately any way we liked, for not taking money from other taxpayers in our retirement and so that we could live comfortably as our other sources of income dried up.

We went through those expensive years of paying off a house (18% interest rates) and raising a family and thought that we would be able to enjoy a worry-free comfortable retirement with a chance to travel and enjoy our twilight years because we had saved.

Through shares we are investing in Australian companies and this supports a healthy economy for all Australians. When the stock market, which is on the riskier, more uncertain end of investments, becomes less attractive, **investors will turn to other assets such as housing, thus making housing still less affordable!** This has been demonstrated over the last 2 years with the uncertainty of covid.

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 company profits will effectively be taxed at 60% in our superfund retirement account.**

Company taxation is often misrepresented in the media to garner public support for the franking credit debates, the media often claiming that companies and shareholders pay no tax. Another despicable ploy by government to implement policy. **Most members of the public have no understanding of the complicated tax system.** It is shareholders who are ultimately taxed at their personal income tax rates.

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 always knew Covid would be the perfect Labor excuse to increase taxation because they are unable to run a successful economy – The goose that laid the golden egg greed mentality. And like this fable, this policy will NOT pay off in the long run.

Yours sincerely,

Robert and Catriona Sviderskas

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

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.