

**The Treasurer of Australia**  
**Hon Dr Jim Chalmers**  
**House of Representatives**  
**Parliament House**  
**Canberra ACT 2600**

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Treasurer Hon Dr Jim Chalmers

Dear Sir

Firstly despite your public statements in January 2022 this year before the Federal election not to reintroduce a Tax Franking Credits as ALP policy in 2019 before that Federal election you, the PM Albanese and the Federal ALP have again mislead us the Australian people on this appalling bad public policy.

However despite the appalling short notice for submissions closing today 5 October 2022 and not widely advertised we have this opportunity to submit a response to the consultation on the proposed legislation relating to **Franked Distributions and Capital Raising** our objections are out lined below.

**A. We object** to the proposed legislation changes in particular it being **retrospective back to 19 December 2016.**

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

**C. 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.

**D. 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.

**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 of negative impact of 2022 proposed Franked Distributions and Capital Raising bill**

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.

#### **Alternative means of raising Federal Government revenue on behalf of Australian taxpayers and citizens.**

There are much better public policies to find Government revenue for Australia, tax relief for Australian taxpayers and the taxpayer funded Government services needed some of which are listed below from open public sources and our past work knowledge and experience :

1. Like imposing **full Customs tariff rates** on all imports from Communist China, Hong Kong and Macau, not the current rate of DC -Developing Country rates, China is the second largest economy in the world; it has long ceased being a DC country.

It's appalling that China's imports are subsidised by billions, billions of dollars by Australian taxpayers and Australian citizens, in particular given the 3 years of illegal trade bans on Australian exports imposed illegally by Communist China,

2. Cease supplying Communist China with Australian subsidised gas exports at 2002 set prices (*gas agreement signed by the Howard Govt*) not the current 2022 gas prices Australians, Australian companies are paying. **Either apply a 60% gas exports reserve policy for domestic market on all gas exports to Communist China** for the next 5 years or **impose an Federal export gas tax of equal difference (between the 2002 and 2022 current high gas prices) of Australian gas, on all gas exports to Communist China in the upcoming Federal budget in October, apply this for the next 5 years effective 2022 October budget night, subject to review then in 2027.**

3. Introduce an **Australian style US Federal RICO – Racketeering Influence and Corrupt Organization Act** which would **bring in billions of dollars of the approx. \$50-60 billion of crime activity in seized criminal assets** if introduced and linked to enhanced criminal assets laws.

This part of our RICO submission to Parliament in 2019:

*D. The enhanced criminal assets seizure system linked to and built into the proposed RICO Act would finally expose fully organised criminal assets of approximately \$50-60 billion a year (amounting to approx. 5% of Australian GDP) to seizure action by the courts under mandated RICO provisions thus creating an ongoing revenue stream for the Government of the day and the long suffering taxpayers of Australia.*

**NB A submission has been made to Parliament in 2019 by us and others if you or your colleague wishes an updated copy of that Australian style RICO proposed laws to consider please advised and we will forward it to you to consider along with the PM Albanese and your cabinet colleagues.**

4. Within the Home Affairs Dept. and ABF – Australian Border Force (Customs) – Customs Act and Customs Tariff related areas:

An area which **should have cuts or at least be capped** is the **Tourist Refund Scheme (TRS)**. This allows citizens and tourists to claim back the GST on items purchased here in Australia. Citizens should not be able to claim this refund as they are not tourists, this would give rise to less claims and therefore less government GST funds being refunded.

The other change should be a cap on refunds for tourists.

Tourists buying designer handbags in some cases upwards of \$26,000 or other luxury goods and claiming the tourist refund on these luxury goods should not be permitted. Other luxury goods purchased and are claimed through TRS are items such as expensive jewellery, clothes, shoes, electrical goods etc.

Tourists who can afford to purchase such luxury goods should not be given unlimited GST refunds. GST refunds should be capped at \$2000 in total.

Capping the refunds would be another saving for government. This would mean that tourists could purchase items totalling some \$22,000. **This would give the tourist a \$2,000 GST refund which is ample.**

Why should Australian citizens be subsidising the wealthy with GST refunds and supporting the lavish lifestyles of the "big end of town" just because these people can afford to travel. This measure would also minimised fraud on GST refunds.

These things should be targeted and reworked, not taxing low income retirees.

5. On the import of goods into Australia there should also be an **Environmental impact tax on imported goods that are packaged in plastic**. This would flow on from the plastic bag ban implemented by supermarkets and some states of Australia to cease the use of single use plastic bags.

This would encourage less packaging on goods such as unnecessary packaging used for example packing business shirts and other consumer goods. **This would also give rise to Australian businesses being more price competitive and would encourage less plastic in**

**the environment and boost the circular economy in particular plant based recyclable/compostable.**

6. Another way to save the Federal budget and Australian taxpayers during this current time is **to not allow any non-citizens to claim the first home buyers scheme or be able to claim negative gearing on investment properties.**

**This would save billions and allow first time Australian buyers to enter the housing market for the first time and provide tax resources for social housing for the 118,000 homeless people on Australian streets and future resources public housing programs.**

In conclusion why should non-citizens in particular foreign investors, foreign governments like Communist China be given tax payer benefits but regressive taxes such as ALP/Labour has proposed be applied to Australian citizens who have worked, paid taxes and made provision for their retirement be penalized and like tax paying current Australians, Australian small businesses and taxpayers who are struggling under current worldwide economic conditions imposing Australia.

There are a range of other tax payer funded benefits to non-citizens that should be reviewed before you apply such any taxes to Australian citizens.

Finally please contact us on the contact details address below if you have any questions on our submission or require a copy of the RICO submission.

Yours sincerely,

Richard and Carla Smolenski