

Comments on Exposure Draft Legislation

Background,

My wife and I are self funded retirees and operate our own SMSF. Franking credits form a material part of the funds annual income. We have purchased shares that pay franked dividends and participated in buy backs where the franked dividend together with the franking credit form a significant part of the buy back payment. We have done this on the understanding that there is nothing questionable about this arrangement and it is perfectly legal, now you tell us it may not be.

Reading the Exposure Draft legislation my concern is that we could be liable to a significant tax bill if certain dividends we have received since 2016 are caught up in this definition. This would mean that some tax payers would have to payback refunded franking credits and others would be liable to additional tax payments which they never anticipated.

Our Concerns

- The way this draft legislation reads we are unsure as to what dividends fall under the definition of being paid out of capital raisings. A few examples should have been provided in the explanatory paper and this would have been very helpful and may have avoided unnecessary worry. We do not know from which account a Company pays dividends. All we know is that a company declares a dividend and whether the dividend is franked or not. This is a matter that needs to be settled between the company and ATO before the dividend is announced and the company should get a tax ruling from the ATO if necessary, so that the public are not caught up after the event. Further, if the ATO has concerns on franking credits being attached to certain dividends the public should be made aware of this. This is the first time we are hearing of any concerns. If the Government wishes to make changes to current franking credit arrangements going forward, then we should be advised well in advance.
- In the last FY (21/22) there were 4 companies that offered off market buy backs – Commonwealth Bank, Westpac, Woolworths, JB HiFi – the franking credits from these buy backs were substantial and refunded by the ATO without question. Are you advising us that this money should be set aside in case the ATO wants it paid back.
- The other concern is that the prosed legislation is to be applied retrospectively from 2016 (Turnbull Government's time) which is 2 Governments back. We have previously never heard of the intention to change these rules. This It must have been shelved by the government of the day very quickly and discarded as I can't recall reading or hearing about this intention before. This is completely unjust and will have significant impacts on certain individuals who have acted in good faith. Government's often announce proposed changes which never get through a Parliament. Are we now to plan for previous pieces of proposed legislation that have been voted down, to be made law retrospectively by a future Government. There has to be strict time limits if the practice of resurrecting announcements made by previous Governments are to be legislated retrospectively.

Bruno Spizzo,