4 October 2022

Director, Corporate Tax Policy Unit,
Treasury
Langton Crescent Parkes ACT 2600

By email: frankeddistconsult@treasury.gov.au

Dear Director,

Thank you for the opportunity to make a submission to the consultation on the proposed legislation relating to Franked Distributions and Capital Raising. The need for Treasury to deal with situations involving tax avoidance and franked dividend distributions is appreciated.

We, as self-funded retirees, however object to the proposed legislation changes. Our objections, as detailed in the attached *Submission to the Consultation on the Proposed Franked Dividends and Capital Raising Legislation*, can be summarised as follows:

1. The draft legislation will have unintended consequences by impacting on legitimate company operations and the Australian banking system.
2. The draft legislation removes a business's ability to manage cash flows between capital raising and distributions. These can represent the normal and legitimate flow of commercial capital management.
3. The draft legislation will burden thousands of Australian shareholders who have planned or are planning their retirement. This will place stress on individuals and on the Australian pension system.
4. The draft legislation will unfairly burden Australian investors with retrospective tax debts. These investors, in good faith, budgeted for and paid their lawful tax assessment based on the existing in place tax law.

On a personal level, successive governments, both Coalition and Labor, have emphasized the need for people to fund their own retirement rather than relying on the government purse. We took heed of this and saved throughout our entire working life. Our objective was to ensure that we would be fully self-funded in our retirement ie without any reliance on the age pension and its associated benefits such as the Commonwealth Seniors Health Card. This proposal puts this objective at risk by significantly reducing our income and as a consequence our anticipated retirement lifestyle.

Yours sincerely,

David Valentine　　Viv Valentine

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Submission to the Consultation on the Proposed Franked Distributions & Capital Raising Legislation

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. Accordingly, it could:

   (i) delay or discourage the normal processes of capital raising, investment and economic growth in Australia;
   (ii) interfere with the operation and the efficiency of the Australian capital markets; and
   (iii) interfere with 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). It 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 draft legislation 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 draft 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 with bipartisan support. Implementing retrospective change on people who are already retired (and in many cases cannot return to work), or people who are well into planning their retirement (and in many cases have insufficient time to adjust their plans) will burden these individuals, their families and in turn the economy. As a result, each of these will face economic uncertainty.

4. **Retrospective Tax Debts**

   The retrospective application to 19 December 2016 would unfairly prejudice franked dividends paid out to shareholders of Australian companies leaving them with unexpected tax bills for dividends they have since received. These tax bills will be paid at a time of economic uncertainty and significant cost of living pressures. 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, in good faith, Australians have budgeted for and paid their lawful tax assessment based on the existing in place tax law.