

**Director
Corporate Tax Policy Unit
Corporate and International Tax Division
Treasury
Langton Cres
Parkes ACT 2600**

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By email: OMSBBpublicconsultation@treasury.gov.au

Dear Director,

Thank you for the opportunity to submit a response to the consultation of the Treasury Laws Amendment (Off-Market Share Buy-Backs) Bill 2022.

I object to the proposed changes and believe the draft legislation is unfair to Australian companies and all shareholders.

In the Treasury Laws Amendment (Off-Market Share Buy-Backs) Bill 2022 and similar proposed legislation affecting franking credits, why does the government make the issue of understanding the franking system so complicated for everyone to understand, especially for politicians to understand, and especially as politicians ultimately decide the legislation ?

Treasury Laws Amendment (Off-Market Share Buy-Backs) Bill 2022, if applied, will weaken the franking system.

Off-market share buy-backs and selective reductions of capital are important and established capital management tools for Australian companies and their boards. Any changes to these proven practices will negatively impact Australian companies' capital management choices and have unintended consequences.

Under the proposed amendments to off-market share buy-backs, companies would no longer be able to pay fully franked dividends to participating shareholders as part of the buy-back consideration paid. In addition, the government is also proposing to eliminate franking credits permanently to the extent it would have been paid out in a fully franked dividend to shareholders, should a company wish to conduct an off-market share buy-back in the future. So, not only is the government limiting a company's ability to distribute franking credits to shareholders, it is now proposing to permanently take those franking credits away from companies, in turn denying them the ability to distribute legitimate tax payments made on behalf of their shareholders. The above changes were added to the legislation and were not announced in the Federal Budget on 25 October 2022. It is a significant negative addition which looks to further disenfranchise Australian companies and investors.

I implore the government not to look at this proposal in isolation, but rather to view it in conjunction with the submission on Franked Distributions and Capital Raising (which closed for submission to your office on 5 October 2022). Together, these proposed changes undermine a

system that has supported Australian companies and investors through more than three decades of economic stability and growth. During that time, the world has experienced a number of major macroeconomic events such as the global financial crisis and the current system has protected Australian companies, and in turn their shareholders, through these times of economic instability, reducing companies need to take on unnecessary debt. It has encouraged Australian companies to invest in and pay corporate tax in Australia and emboldened Australians to invest locally. This, in turn, has created more jobs for Australians and provided the additional income tax revenue that Treasury and Government are currently seeking.

I believe that both the proposed changes fail to recognise the fundamental principle underlying the franking system and the reason for its creation, being the avoidance of double taxation on company earnings. If passed, the proposed changes will unfairly target retail investors, low-income investors and superannuation beneficiaries, while limiting companies' abilities to effectively manage their own capital.

I believe Treasury and Government are underestimating the long lasting and broad-reaching impact these changes will have on Australia and we ask you to re-consider making any changes.

As Paul Keating said – people should understand that for Australian taxpayers, the company tax (on dividends to shareholders) is broadly a withholding tax from shareholders. The government collects the tax on the dividends to shareholders at the 30% rate on company income, and temporarily withholds that tax at the ATO until the dividends are paid by the company and nominally returning the tax withheld to shareholders on their dividend statement in the form of imputed credits (tax withheld by the ATO) when the dividends are paid.

The company accounts for all of its income tax, including the tax withheld on dividends to shareholders, to the ATO in the company's annual Income Tax Return.

The ATO later refunds the income tax withheld on dividends (franked income) to shareholders after each shareholder has submitted their Income Tax Return to the ATO.

The ATO has withheld the tax on the dividends (withholding tax) until after the shareholder has submitted their Income Tax Return.

This is because the net tax refund (if any) of franking credits to the shareholder can be affected by several items, including LMITOs etc, and the net refund will almost certainly not be exactly the same as the refund of franking credits withheld by the ATO.

The franking credit (tax withheld by the ATO) payable to shareholders is in effect a "tax offset" against any other income tax payable indicated on the shareholder's Income Tax Return.

If the other income tax payable indicated on the shareholder's Income Tax Return exceeds the amount of franking credits due to the shareholder, then there will be a net amount of income tax payable to the ATO by the shareholder, ie, other income tax payable less the franking credits withheld by the ATO.

If the other income tax payable indicated on the shareholder's Income Tax Return is less than the amount of franking credits due to the shareholder, then there will be a net amount of franking

credits payable by the ATO by the shareholder, ie, the franking credits withheld by the ATO less the other income tax payable.

In the Treasury Laws Amendment (Off-Market Share Buy-Backs) Bill 2022 and similar proposed legislation affecting franking credits, why does the government make the issue of understanding the franking system so complicated for everyone to understand, especially for politicians to understand, and especially as politicians ultimately decide the legislation ?

It is not a good sign of Leadership when governments inappropriately propose to amend a franking credit taxation system which has been accepted as being eminently fair and equitable since it was first introduced by Treasurer Paul Keating in 1987.

Yours sincerely,

Malcolm Duce

Shareholder in Australian listed companies.