Stakeholder	Comments/views	Treasury comment
Australian Custodial Services Association (ACSA)	• Notes the importance of integrity rules to the dividend imputation system, however contends that the current rules can see shareholders denied franking credits in situations where there has been no intention of breaching these rules. – Argues that this is due to large funds having multiple portfolios, where various portfolio managers do not communicate with each other. This can create situations where the fund overall falls outside of the integrity provisions.	• Noted. These issues relate to the operation of the imputation regime generally and as such will be considered during the broader rewrite of the holding period rules.
	• Opposes modifying the holding period rules as automated accounting and tax systems are used to produce a range of reports. Consequently changing these systems to accommodate any law change will be expensive, with large sections of reprogramming required. – This would be very costly, and would introduce systems risk when the upgrade first goes live.	• Noted. We understand that introducing a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI would achieve the policy intent while avoiding most of these costs.
	• Adding a new criterion to the anti-avoidance provisions is the favoured option because it would avoid investors inadvertently breaching the holding period rules and consequently being denied franking credits.	• Not agreed. The majority of submissions state that adding a criterion could create uncertainty for taxpayers. A singular non-self-executing rule would be difficult for the ATO to administer.
	• It is argued that a specific double franking credit integrity rule would be difficult to implement from a systems perspective, much like changes to the LIFO provisions for the reasons outlined above. This is as its introduction would require the introduction of manual checking processes which could introduce further error.	• Noted. A specific integrity rule could create some compliance costs for taxpayers. However, submissions indicate a specific integrity rule would result in much less compliance costs than a structural change to the holding rule provisions, and some form of self-executing rule would be required to prevent dividend washing.

	• It is also argued that all of the options proposed could have unintended consequences. This is as clients do not track the activities of each portfolio manager, and these portfolio managers do not communicate with each other. As a result, a fear of breaching the integrity rules may limit legitimate cum-dividend market trading. • It is proposed that if a specific double franking credit integrity rule is desired by the Treasury then it should be inserted into the rewritten holding period rules – not the general anti-avoidance provisions.	• Noted. These issues relate to the operation of the imputation regime generally and as such will be considered during the broader rewrite of the holding period rules. • Agreed. Introducing a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI is consistent with this.
Australian Financial Markets Association (AFMA)	• Argues that the rewrite of the repealed holding period rules should be expedited to ensure certainty. • AFMA's preference is for dividend washing to be addressed through the definition of a 'qualified person'. For example, the former section 160APHO could be amended to reflect that: *A taxpayer is not a qualified person in relation to a particular distribution if the shares or interests in shares on which the distribution is paid were acquired on or after the date on which the shares went ex-dividend and substantially identical shares were disposed of in the three day period commencing on the day on which the shares went ex-dividend.* • It is proposed that as an interim measure (before the rewrite of the integrity provisions is completed) that there should be a tightly targeted rule similar to that proposed above. • It is believed that the changes to the LIFO rules proposed in the paper could capture legitimate activity and construe it as 'dividend washing'. This could happen when:	• Noted. Legislative priorities are a matter for the Government. • Agreed. We understand that introducing a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI (whether in the ITAA 1936 or ITAA 1997) would achieve the policy intent while limiting compliance costs for taxpayers. Further consultation should occur on law design issues through the release of exposure draft legislation. • Agreed. • Noted. The amendments will ensure that two imputations credits cannot be claimed for what is effectively one parcel of shares, regardless of the 'bona fides' of the underlying transactions.

	– trade fails where a seller needs to acquire shares to deliver on a cum-dividend basis and does so through utilising the special cum-dividend market; – a securities lending transactions where a borrower of shares who has on-lent those shares does not receive the shares back in time to redeliver to the original lender and utilises the special cum-dividend market to acquire shares to settle the securities lending arrangement; and – transactions between buyers and sellers who are both able to claim the franking credits. • It is also noted that as many participants determine their franking credit eligibility through the use of automated computer software that any law changes would have significant operational and compliance costs. A targeted solution such as that proposed above would circumvent this problem. • Any changes to general anti-avoidance provisions (Part IVA) to address dividend washing are strongly opposed due to the high degree of uncertainty that this would create.	• Noted. We understand that introducing a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI would achieve the policy intent while avoiding the need for taxpayers to update compliance programs. • Agreed.
BDO	• It is argued that the current specific anti-avoidance rule in section 177EA of Part IVA of the ITAA 1936 should be sufficient to counter dividend washing. • It is proposed that if other options are pursued though, that adding a further criterion to section 177EA to highlight that the timing of trades is a relevant factor to determining whether a scheme was for tax avoidance purposes would be acceptable. • It is argued that instead of introducing new tax legislation that the ATO should look for a suitable test case to take to the courts to confirm the effectiveness of Part IVA as it stands.	• Not agreed. Advice from the ATO indicates that the existing law is very difficult to apply and would not necessarily apply in all circumstances. • Not agreed. Other submissions argue that this could create uncertainty. • Not agreed. Advice from the ATO indicates that the existing law is very difficult to apply and would not necessarily apply in all circumstances.

	• If this is not desirable it is believed that the most appropriate method of addressing 'dividend washing' would be the inclusion of suitable provisions in the rewritten holding period rules. – It is proposed that the process of rewriting should be expedited, as the current reference to repealed rules will create uncertainty with the introduction of any new integrity provisions. • It is argued that part IVA should not amended to address dividend washing as it should be reserved for anti-avoidance rules of general application, rather than tightly focussed provisions.	• Noted. In relation to the timing of the rewrite, legislative priorities are a matter for the Government. • Agreed.
Finance Discipline Group	• Academic submission from the University of Technology Sydney that argues that dividend washing is large problem and estimates that the annual cost to revenue could be as high as $129 million.	• Noted. Treasury costing indicates that the cost is $20 million per year and is likely to grow into the future if action is not taken. This is broadly consistent with the conclusions of the Finance Discipline Group.
Financial Services Council (FSC)	• The FSC does not support changes to the general anti-avoidance provisions (Part IVA) to counter the issue of dividend washing as: – it would create significant uncertainty; – would be difficult to self-assess; and – would be difficult for the ATO to administer. • The FSC does not support changing the holding period rules for the following reasons: – the holding period rules are currently being rewritten into the ITAA 1997 and therefore should not be changed before the rewrite is complete; and	• Agreed. • Noted. We understand that introducing a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI would achieve the policy intent while avoiding the need for taxpayers to update software and regulatory controls.

	– the current rules have resulted in complex software and regulatory controls being developed. To alter the rules would be costly to all concerned, and highly likely to result in inadvertent errors. • The FSC instead recommends that a targeted solution could be to revise section 160APHO to change the definition of a qualified person.	• Noted. We understand that introducing a specific integrity rule along the lines proposed would achieve the policy intent while avoiding the need for taxpayers to update compliance programs.
Law Council of Australia	• The Law Council does not support any amendments to existing tax law as the practice is only costing the Government $20 million in revenue each year. • Is opposed to policy announcements that take effect prior to legislation receiving royal assent. It is argued that this is retrospective. • Argues that amending the holding period rules to address the break in ownership should resolve the problem without creating uncertainty. – It is possible however that this could have unintended consequences on legitimate trading activity. • Argues that the rewrite of the former Part IIIAA of the *Income Tax Assessment Act 1936* should be a legislative priority. • Opposes any amendments to the general anti-avoidance rules, or the introduction of a specific anti-avoidance rule. It is argued that these options would create further uncertainty as the Commissioner would have the discretion to determine what constituted a violation of any such provision.	• Not agreed. The problem poses a substantial risk to revenue if not addressed now. • Not agreed. It is not unusual for integrity measures to take effect before the date of Royal Assent. • Noted. Introducing a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI would have a similar effect to modifying the holding period rules but result in lower compliance costs for taxpayers. The amendments will ensure that two imputations credits cannot be claimed for what is effectively one parcel of shares, regardless of the intent of the shareholder. • Noted. Legislative priorities are a matter for the Government. • Agreed.

Plato Investment	• Believes that the option outlined in section 3.2 (changes to the holding period rules) is the best solution. It is not anticipated that this would have any impact on legitimate market trading or create undue uncertainty. – Believes that this solution is also sufficiently easy to understand, and should be used on a concept basis. • Both a specific anti-avoidance rule, and changes to the existing general anti-avoidance rules are opposed as they would create high levels of uncertainty.	• Noted. Introducing a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI would have a similar effect to modifying the holding period rules but result in lower compliance costs for taxpayers. • Noted.
Stockbrokers Association of Australia	• Stresses the continued importance of maintaining the existence of special cum-dividend markets where requested. • Notes that the proposed change to the holding period rules is the most favourable option with no unfavourable consequences raised by members. • The other two options however would introduce an element of uncertainty that is undesirable.	• Agreed. • Noted. Introducing a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI would have a similar effect to modifying the holding period rules but result in lower compliance costs for taxpayers. • Noted.
The Tax Institute (TI)	• Agree that dividend washing threatens the integrity of the dividend imputation system • Note that it is possible that the current general anti-avoidance rules apply to dividend washing; however recognise that the Commissioner has issued private binding rulings which limit its future applicability. • Argue that the proposed changes to the holding period rules should not be pursued because:	• Agreed. • Noted. Advice from the ATO indicates that the existing law is very difficult to apply and would not necessarily apply in all circumstances. • Agreed.

	– the holding period rules need to be revised and rewritten and so any amendments completed now would soon need to be revised as part of that process. – Altering the current holding period rules would have significant compliance costs as a range of software is required to be updated. This update will also raise the risk of implementation risks and inadvertent errors. – Amended assessments may need to be issued by the ATO until systems issues are resolved. This will come at significant cost.	
	• Propose instead to revise the current qualified person rules such that section 160APHO would read as: *160 APHO(5)* *A taxpayer is not a qualified person in relation to a particular dividend to the extent that the relevant shares were acquired after the ex date in relation to that dividend and substantially identical shares were disposed of in the three day period commencing on the ex date.*[N.B. Alternatively, it may be desirable to define this period with reference to the time period during which shares in that company can be sold/purchased on a CD basis, in order to minimise the need for future, minor legislative amendments.] *160APHO(6)* *Ex date is the date when a company closes its shareholder register for the purposes of determining which shareholders are entitled to receive a particular dividend.*	• Agreed. We understand that introducing a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI would achieve the policy intent while limiting compliance costs for taxpayers. Further consultation should occur on law design issues through the release of exposure draft legislation.

	• This would apply with effect from 1 July 2013. • It is argued that this rule would be self-executing and operate regardless of the taxpayer’s subjective or objective purpose. It will provide certainty and alleviate the need for the Commissioner to issue extensive guidance on when the rule would apply in circumstances of dividend washing. • Argue that section 177EA is already sufficiently strong to operate as a supplementary measure. Consequently, the ATO should vigorously apply this provision and launch an education campaign instead of the Government adding another rule to this section. • A separate, targeted integrity rule would suffer the same problems as above. It is argued that section 177EA is sufficiently robust to address dividend washing. • Propose that thought should be given to circumstances in which funds with multiple portfolio managers that do not communicate inadvertently breach the imputation integrity provisions. • The following questions should be answered: – Is the taxpayer required to include the full dividend in assessable income without the associated franking credit? – Will the sale of the ex-dividend shares still be treated under the routine CGT provisions? – Conversely, will the sale of the CD shares still be treated under the routine CGT provisions?	• Noted. • Noted. This is a matter for the ATO. • Noted. • Noted. The amendments will ensure that two imputations credits cannot be claimed for what is effectively one parcel of shares, regardless of the intent of the shareholder. • Taxpayers would not be required to gross up their dividend if the franking entitlement is cancelled. • It is not anticipated that changes will be required to CGT provisions.

	• It is also noted that unless the chosen measure also applies to related parties the capacity for undetected dividend washing activity will remain. Conversely, application of such a measure to all related parties risks being unnecessarily broad and will require consideration of all of the activities of a taxpayer's related parties in order to ensure access to franking credits attached to a cum-dividend share.	• Noted. Related parties would be captured under a specific integrity rule along the lines proposed by AFMA, ACSA, FSC and TI.
Mr Brian Bolton	• Does not believe that a legislative solution is required. • Believes that the ATO are best placed to counter the problem of dividend washing.	• Not agreed. ATO advice indicates that a legislative solution is required.