

Director
Corporate Tax Policy Unit
Treasury
Langton Cres
Parkes ACT 2600

By email: frankeddistribconsult@treasury.gov.au

Dear Director,

Thank you for the opportunity to submit a response to the consultation on the proposed legislation relating to Franked Distributions and Capital Raising. Legislation that is personally important to me, as being a Part Time Employee, Franking Credits help support my financial needs.

I have cc'd Wilson Asset Management, as I mention them below and while they should be praised for attempting to deliver the news of this Draft legislation, following discussions with Peers and Friends I believe the majority of working Australians remain unaware of this Legislation and less aware of the resulting on-going negativity to their investment future. If it succeeds!

I strongly object to the proposed legislation changes, as I do the dishonest way this has been raised by the Government, at short notice, with limited time to respond, during a time of financial angst, in the hope that few, of many who will be adversely impacted, will even know of this matter until after the decision has been made! With even fewer being able to respond!

My view is based on the fact that I was only made aware of the proposed changes, due to a small non superannuation investment I have with Wilson Asset Management.

**While I am part of a small and very close-knit Industrial Organisation, on asking Members, family and Peers, approx. 100, all of who will be adversely impacted by this legislated attack on Franking Credits, all but one I asked, was unaware of the proposed changes!
Less than 0.5% I asked, had any knowledge!**

As in the main, our member's, while Working Class, are well versed and interested in investments, I therefore believe, that this extremely low percentage of awareness, prior to any decision making, would be mirrored, if not even being a far lower percentage, throughout Australia.

This outcome being obviously due to either their Superannuation being managed & also, not having personal investments in Companies, such as Wilson Asset Management investments, that have alerted investors.

I also note that while Wilson Asset Management have attempted to get the news out, and they should be praised in their attempts, their success, unfortunately, has appeared to have been limited. Even this Draft, which I have changed, was extremely difficult to edit and I believe many would have simply given up if their computer systems were not up to date.

I agree with and believe the draft legislation is inequitable to Australian companies and shareholders and it could inadvertently impact situations of legitimate company operations.

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.

In respect to RETROSPECTIVITY, I find that the very fact that an Australian Government, or a Government Agency, is even contemplating the introduction of a punitive system, such as this Legislation that will damage the future living standards of everyday Australians, unpalatable! The question of doing so Retrospectively for any punitive Taxation Legislation, whether necessary for the future of Australia, as a Country, or not, is simply draconian!

And as put forward by Wilson Asset Management I agree that, *“If passed, its application would also unfairly burden Australian investors with retrospective tax debts, to be paid at a time of economic uncertainty”*.

I am particularly disgusted with those who express the view that attacking Franking Credits will “hit the rich”, when in fact the opposite will occur as it has and does, in countries that have systems of investment aimed primary at “Growth”, systems that require churn and active investment techniques that support the wealthy. As a Union worker all my life, I, along with peers and friends have invested both within and outside of Superannuation, and as all are aware, the dividends earned along with the related Franking Credits deliver benefits throughout ones working career, especially for the young, who have the benefit of compounding interest.

I sincerely hope that this attack on the future of all Working Class Australians and in fact all Australians, through the attack on such an important investment benefit that are Franking Credits, will fail and common sense and a belief in Australia’s future will succeed.

Further I agree with the Wilson Asset Management Submission as set out below.

Yours sincerely,

R (Bob) G Bunce.

Please do not hesitate to contact me on;

The Wilson Asset Management Submission, that I R G Bunce agree with:

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 [I/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 While [I/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.