
Director

Corporate Tax Policy Unit

Treasury

Langton Cres.

Parkes ACT 2600

By email: frankeddistconsult@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.

We object to the proposed legislation changes.

We 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.

The Franked Distribution and Capital Raising draft legislation, if widely applied, will lead to the demise of the franking system. It will stop Australian companies who issue new shares under a Dividend Reinvestment Plan (DRP) from paying franked dividends and significantly increase the cost of capital for all franked dividend paying Australian companies. It will also risk the stability and integrity of the Australian banking system by inhibiting effective capital raising during challenging economic periods such as the start of the coronavirus pandemic.

If passed, its application would also unfairly burden Australian investors with retrospective tax debts, to be paid at a time of economic uncertainty.

My wife and I are fully self-funded retirees. We have some individual investments and operate our own SMSF. Our only annual income is derived from these investments, and franking credits form a material part of this income. We hold shares that pay franked dividends and have participated in off market buy-backs where the franked dividend together with the franking credit form a significant part of the payments. We have done this on the understanding that there is nothing questionable about the arrangement and it is perfectly legal. Reading the Exposure Draft legislation our concern is that we could be liable for a significant tax bill if certain dividends we have received since 2016 are caught up in the "Capital Raising" definition which could mean we would have to pay back some/all of these franking credits, something we would never have anticipated.

Our Concerns

- The main concern is that the proposed legislation appears to be applied retrospectively from 2016 (Turnbull Government's time) which is 2 Governments back!! This is completely unjust and will have significant impact on retirees like us who have acted in good faith. There has to be strict time limits if the practice of resurrecting announcements made by previous Governments are to be legislated retrospectively. If the Government wishes to make changes to current franking credit arrangements going forward, then we should be advised well in advance.
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- We are unsure as to what dividends are being paid out of 'Capital Raisings'. 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. If the ATO has concerns on franking credits being attached to certain dividends the public should be made aware of this.
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- Since 2016 several companies (including many major banks) have offered off-market buy-backs with the substantial franking credits from these buy backs refunded by the ATO without question. If all these franking credits are required to be refunded, this could cause us significant financial stress!

I thus request the policy be amended to remove our concerns.

Please contact me on the above email address if you have any questions on the above.

Yours sincerely,
Alan Wiseman