

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

By email: [OMSBBpublicconsultation@treasury.gov.au](mailto: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/we] object to the proposed changes and believe the draft legislation is unfair to Australian companies and all shareholders.

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/we] 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/we] 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/we] 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.

**Many Self-Funded Retirees (like my wife and I) have developed financial strategies to maintain our self-funding. Part of our strategies in the past have involved appropriate buy-back offers. We currently have a substantial holding in a company (IMB Bank) which has already bought-back a substantial proportion of its shares and has the stated policy of buying back all shares and resorting to a Mutual Society status. Without the franking component the scheme will not be attractive and will probably not go ahead. This will result in a real financial loss for us.**

**If the proposed changes are to go ahead, some consideration should be given to this type of situation where the buy-back, despite planned over many years, should be considered an ongoing process, and therefore can proceed to completion under the financial conditions prevailing when it was commenced.**

Please contact me on if you have any questions on the below submission.

Yours sincerely,

Eric NYHOLM