

**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.

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, but it is also 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. We ask 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.

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.

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 reconsider making any changes.

More generally, commencement of the removal of franking may lead to a reduction in share prices. The largest single investor group in the domestic equity market is the Australian working public and retirees, either directly or through some form of superannuation structure. This outweighs overseas equity investments by a significant factor especially at an individual level.

The idea that people should save for their retirement and not rely on government aged pensions has been promulgated by Parliament for over 30 years and dividend franking has helped support this idea. Hundreds of thousands of Australians have based their retirement planning to some degree on dividend franking.

There is no evidence that the millions of Australians who are living off their savings/superannuation, and those who are working towards their eventual retirement by contributing to superannuation will be better off with the removal of imputation. In fact, returns for almost all superannuation funds will be reduced by the value of franking credits over the long term. Given the large proportion of companies listed on the ASX that pay franked dividends, imputation is a significant wealth-enhancing aspect of investment.

Yours sincerely,

Michael Webb and Brook Webb.