
From: [REDACTED]
Sent: [REDACTED]
To: OMSBB Public Consultation
Subject: Changes to the Off-Market Share Buy-Backs Bill

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

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, 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.

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.

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 re-consider making any changes.

This statement has been taken from the ATO's own website: "Dividends paid to shareholders by Australian resident companies are taxed under a system known as imputation. This is where the tax the company pays is imputed, or attributed, to the shareholders. The tax paid by the company is allocated to shareholders as franking credits attached to the dividends they receive".

This means that your franking credit is just personal tax that has been paid on your behalf by the company. The company has no idea what the financial circumstances of each of its shareholders are, so, as required by law, it pays a flat 30% tax rate, and at the end of the tax year, each individual can claim the franking credit as personal tax already paid, and if overpaid, is entitled to a refund.

The imputation system brings share investment back into line with the tax treatment of other forms of investment, e.g. property. The Australian Government's proposed changes are probably an unwitting attack on retirees and housewives, particularly those who can't afford investment property, and will promote a further widening of the wealth gap.

It staggers me that both sides of politics appear to have next to no understanding of how the tax system works. Many still believe that a franking credit is a "gift". If they ever bothered to look at the share market, they would note that when a stock goes from "cum dividend" to "ex dividend", the share price drops by both the dividend AND the franking credit! THERE IS NO GIFT!

Please contact me on [REDACTED] if you have any questions on the above submission.

Yours sincerely,

Max Brewster [REDACTED]
[REDACTED]