

7 December 2022

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

Our ref : JWD:mp:
Your ref :

Email: OMSBBpublicconsultation@treasury.gov.au

Dear Sir/Madam,

In relation to the opportunity to submit a response to the consultation of the Treasury Laws Amendment (Off-Market Share Buy-Backs) Bill 2022, we make the following comments.

We object to the proposed legislation and changes to the current status quo, and consider the draft legislation to be unfair to Australian companies and all their shareholders.

Treasury Laws Amendment (Off-Market Share Buy-Backs) Bill 2022, if passed in its present form, will weaken the well established franking system introduced by a previous Labor Government.

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 adverse 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 aims at further disenfranchising Australian companies and investors, and dismantling the company franking credit laws.

The government and Treasury are requested not to look at these proposals in isolation, but rather to view them 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 introduced by a former labor government 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 including the global financial crisis. The current system has protected

Australian companies, and in turn their shareholders, through these times of economic instability, reducing a company's need to take on unnecessary debt. It has encouraged Australian companies to invest in and pay corporate tax in Australia and encouraged 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 a company's ability to effectively manage their own capital requirements.

We submit Treasury and Government are underestimating the long lasting and broad-reaching impact these changes will have on Australian companies, their shareholders and commerce generally, and we ask you and the current labor government to re-consider making any changes to a divided franking system which effectively ended the ludicrous double taxation of company profits.

Yours sincerely,



John W Durack
(Legal Practitioner/Company Director)