

# CarState Pty Ltd

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

Dear Sir/Madam

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

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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.

When companies buy back their own shares, it is because management deems it to be more efficient than using that money to pay dividends. By preventing the distribution of franked dividends in such buy-backs, companies are forced to make a less efficient use of their funds, thereby, in aggregate, lessening the efficiency of our economy as a whole. It is important that Australia is as efficient as possible, as we are competing on a world stage. After a company has paid income tax, it should be able to use those after-tax funds freely and without restriction or discrimination, including the buy-back of its own shares without the friction of a tax penalty. The government should be encouraging efficiency in the economy, not proposing policies that detract from it.

Our franking system should be cherished, as it prevents highly inefficient double taxation and ensures fair taxation of income at the marginal rates of ultimate beneficiaries. This gives us a significant competitive advantage over other countries, such as the USA, that do not have an imputation system.

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

Yours faithfully

**CarState Pty Ltd**

Bruce Carmichael

**Managing Director**

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