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

By email: 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 object to the proposed changes and believe the draft legislation is somewhat unfair to some Australian companies and their 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 suggest 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). 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 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 believe Treasury and the 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.

I worked for several Australian organisation both public and private, as well as overseas and thus never ended up with a large retirement amount. I was a little lucky to have worked 18 years in Federal and ACT bodies and was able to obtain a small Commonwealth Super Pension but I realised well before I retired, that I needed to supplement my retirement to be able to live comfortably. Thus, I did salary sacrifice into an SMSF I started back in 1998. I continue to have this and its in Pension Mode now. It relies on dividends with franking credits to pay me an annual pension, as my CSS Pension is not large enough to support my wife and I. Limiting Franking Credits will only make it harder for us to live comfortably, which I well remember was the original concept of the Super System that Paul Keating created way back.

Fairness in Super

While I am comfortable in retirement, I am not greedy and I can see that the Super System needs some change to make it fair and equitable. It seems to me that its broken somewhat where wealthy retirees can now move most of their super savings into Accumulation mode and whilst it's not as attractive as Pension mode, they can accumulate earnings and only pay 15% tax forever. I can see the need to limit the amount that people/trusts can have in Accumulation mode. Maybe the solution is that the amount in Accumulation should be limited to the same amount that we can have in Pension Mode i.e., $1.7M currently. Being able to have $10M or more in accumulation super I feel is rather obscene. I know in many forums etc, that some have suggested figures such as $2M, $3M, $5M. I guess these would still be better than an unlimited amount.

So please think about who are the people who can more easily afford to live with less Super Savings. Its not us little guys who just happen to need the benefits of fully franked dividends. Its clearly those who have millions sitting in Accumulation Pension Accounts.

Yours sincerely,

Greg Hutchison,

Retiree,