Australian Shareholders' Association

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31 March 2023

Mr Alan Raine
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
By email: economics.sen@aph.gov.au and online

AUSTRALIAN SHAREHOLDERS' ASSOCIATION – CONSULTATION ON TREASURY LAWS AMENDMENT (2023 MEASURES NO. 1) BILL 2023

Dear Mr Raine

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support.

Thank you for the opportunity to submit comments to the Senate Estimates Legislation Committee on *Treasury Laws Amendment (2023 Measures No. 1) Bill 2023* (the Bill).

We wish to comment briefly on Schedules 1, 2, 4 and 5. We confirm our positions as advised in our prior submissions on the matters to be considered under Schedule 2, Schedule 4 and Schedule 5 and are happy to further discuss these positions.

Schedule 1 - Registration of providers and assisted decision making

While many of our members are disintermediated investors, others use financial advice as an input to their investment decisions. ASA supports the proposed changes to improve the operation of the registration process for Financial Advisers by ASIC as outlined in the paper.

In relation to ASIC using "assisted decision making" for processing applications, which is a practical method to get through the workload, we recommend some sort of audit process to ensure that these tools of automation do the job and that there are no unplanned consequences. An annual check by an independent group may be part of the solution.

Schedule 2 - Sustainability standards

Previous submissions Climate-related financial disclosure and **Climate-related financial disclosure — Joint Peak Bodies Submission**

ASA supports a global approach to the development of sustainability disclosure standards and is supportive of the International Sustainability Standards Board being the global body to issue these standards and measures. This will facilitate Australian accounting Standards Board and Auditing and Assurance Standards Board developing sustainability standards and relevant auditing and assurance as well as measures which allow the Financial Reporting Council to provide the strategic oversight and governance functions.

We value the development of a globally consistent, comparable, reliable, and verifiable corporate reporting system to provide all stakeholders with a clear and accurate picture of an organisation's ability to create sustainable value over time.

ASA expects that the evolution in sustainability reporting will be valuable to aid retail shareholders long-term investment decisions, and the comparability will enhance efficiency for companies in meeting disclosure expectations.

Schedules 4 and 5

Many ASA members rely on refunds of excess franking credits to support their retirement and fund their daily living expenses.

Our members are concerned that the Government could break their election promise not to make major changes to superannuation and franking credits in this term.

Schedule 4 – Off-market share buy-backs

Previous submission

[Improving the integrity of off-market share buy-backs]

We remain concerned with the potential impact on holders of exchange traded securities, especially retail shareholders, and on the companies themselves in relation to this proposed legislation in regard to:

- Piecemeal revisions of taxation law and retirement incomes policy rather than a holistic review of the Australian tax and retirement income framework/system (also applies to Schedule 5);
- The potential for unintended consequences such as a capital return being classified as selective capital return due to investors from other jurisdictions needing to be excluded as their local laws don't permit such transactions (ineligible shareholders); and
- The reduced incentive for companies to create franking credits if they are likely to be unable to be distributed.

Retrospective franking debit for "selective" reductions of capital

We remain concerned with the backdating of amendments applying to the cancellation of a membership interest by a listed public company to budget time rather than from the issuance of the consultation paper on 17 November 2022.

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We consider the insertion to impose a franking debit in a listed public company's franking account in respect of selective reductions of capital, to ignore that the cases where these payments are effectively funded from retained profits. These profits if taxed (hence the existence of the franking credits) will apply at the corporate tax rate rather than the shareholder's marginal tax rate.

A number of ASA members find an off-market share buy-back provides them with an efficient way to sell shares and generate cash flow to fund their living expenses as a self-funded retiree. There is no brokerage to pay, and it is easy to administer as a single transaction.

The laws associated with owning shares, which include taxation legislation, need to be clear and easily understood by individuals and retail shareholders. Any change to legislation needs to be easy to navigate for individuals especially those who may be older and navigating the pension phase of self-funded retirement.

These ad hoc changes make it difficult for investors to confidently save for their future.

Schedule 5 – Franked dividends funded by capital raisings

Previous submission

Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Franked distributions funded by capital raisings

ASA supports measures to address intentional tax avoidance or manipulation of the franking system with intent to avoid tax. We also support the imputation regime which leads to investors being taxed on company distributions at their applicable marginal tax rate.

We are concerned of the potential impact on holders of exchange traded securities, especially retail shareholders who rely on companies to identify the tax implications of any unusual transactions.

We acknowledge the removal of the retrospective element back to the original mention in 2016-17 MYEFO, with the amendments in Schedule 5 to the Bill to apply to distributions made on or after 15 September 2022.

We remain concerned about the broadness and potential subjectivity of the tests to determine which transactions will be captured when assessed at some time after the transaction.

As previously mentioned, using "established practice" in relation to dividend payments may lead to the subjective identification of a franked dividend payment as having been funded by a capital raising, and for that classification to be made public a couple of years after the payment has been made and recognised for tax purposes.

Established practice needs to be defined and a set of parameters incorporated in the bill to reference the variations of company experiences.

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Companies cashflows and profits vary over months and years, whereas the suggestion of an established practice seems to treat them as a consistent annuity. To deal with the variability most listed companies publicise their dividend policies (examples include payment of 60 to 70% of earnings or another company-specific relevant metric). This allows the amount to grow and shrink with the company maturity, industry cycles and seasonality and should be considered part of an established practice even where a listed company is yet to make its initial dividend payment.

When considering a company's capital requirements, they also differ across companies depending on industry, maturity level, time, seasonally, and from year to year. Exchange traded companies are discouraged from holding excess capital as cash until it may be needed years in the future for investment or working capital as lazy balance sheets generate low returns. Investors are better able to deploy the funds elsewhere while it is surplus to immediate requirements and will subscribe to new shares when the company requires it.

Companies manage the interactions of their capital and cashflow needs which may lead to a capital raising for the purpose of new investment appearing to fund a dividend when in actuality it is replenishing the funds for the dividend which have been used for the investment.

If the definition for the established practice in relation to dividend payments remain loose, we see the risk of an administrative and financial burden for shareholders whose companies inadvertently fall foul of the legislation. Taxpayers will be required to amend their tax returns and super funds amend their allocations to beneficial holders dating back to however long it takes for the transaction to be classified.

We also note the estimated annual $10m savings from this amendment indicates the issue to be solved is not a high priority given the annual revenue contribution. We hope to see tighter wording to reflect the issue being targeted.

ASA members have contacted us with fears that the ad hoc changes to the franking regime will harm their management of their retirement incomes and require them to restructure their accumulation and pension funds. To retain confidence the regime needs stability.

If you have any questions about these comments or other matters, please do not hesitate to contact me [redacted], or Fiona Balzer, Policy & Advocacy Manager [redacted].

Yours sincerely

[redacted]

Rachel Waterhouse
Chief Executive Officer
Australian Shareholders' Association