A few years ago a company commenced a new business. The company raised funds to do so via equity from its shareholders. Some of those shareholders are purely investors seeking a return on their money and have no long term interest in the company or its underlying business. Those investor shareholders seek a return on their investment as soon as possible, and ideally by way of franked dividend.

The new business has been very successful and profits have been generated over the last few years. Tax at the corporate tax rate has been paid and franking credits of approximately $4 million have been generated. The cash representing those after tax profits has been used to fund further inventory and improvement in assets such that there is no cash available to make a distribution by way of dividend to shareholders.

The investor shareholders would like a return on their investment, by way of dividend, as a result of the profits generated by the business over the last few years.

The company's success means that it would be attractive to new investor shareholders, who would be willing to subscribe for shares in the company at a value above that at which the initial investor shareholders subscribed for their shares.

In terms of the investor shareholders seeking a return on their investment by way of franked dividend:

1. The company does not have any cash at bank from which to fund a franked dividend.
2. For various commercial reasons the company may not be able to borrow funds from a bank in order to fund the franked dividend.
3. If new investor shareholders subscribed for shares in the company, and the cash were used to fund a franked dividend to the initial investor shareholders, the distribution is likely to be unfrankable due to proposed section 207-159.

As a result of proposed section 207-159 a dividend to the initial investor shareholders is highly unlikely to occur.

In relation to Question 2, I note that $10 million per annum is estimated to be collected by Treasury as a result of the measure. My personal view is that the proposed measure will prevent transactions occurring where there is risk of the new measure being engaged. The franking credits involved in those transactions would, in my experience, far exceed $10 million per annum. However that is not to say that Treasury will *collect* revenue from the proposed measure. My view is that it is more of a deterrent than a revenue collection provision *per se*.

The proposed measure *will*, obviously, result in the collection of revenue if a taxpayer or taxpayers *inadvertently* fell foul of the proposed measure. And if taxpayers were to do so, the franking credits involved would likely be, in my experience, many multiples of $10 million in aggregate.