



**Submission to
Senate Economics Committee**

**TREASURY LAWS AMENDMENT
(2023 MEASURES NO. 1) BILL 2023**

Schedule 5 - Franked distributions funded by capital raisings

**Comments and responses on the Legislation
and related Explanatory Materials**

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Further Information:

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Introduction

Who is the Association of Independent Retirees (AIR)?

The Association of Independent Retirees (AIR) Limited is a national advocacy organisation representing current and future fully and partly self-funded retirees. AIR works to advance and protect the interests and independent lifestyle of Australians in or approaching retirement.

AIR seeks to secure recognition and equity for Australians who, through their diligence and careful management, fully or partly self-fund their own retirement needs.

Context for our submission.

A significant proportion of fully and partly self-funded retirees or those who plan to be, own shares and receive franked dividends. These shares are owned directly, or indirectly through their Managed Funds, SMSF or APRA regulated Superannuation Funds, etc.

They receive franked dividends or distributions from these shares or managed fund units that contribute significantly to their retirement income.

The majority of full and partly self-funded retirees would be classified as retail investors and would not directly participate in corporate capital raisings targeted at wholesale or sophisticated investors.

Retirees may through their ownership of units in managed funds, listed investment companies or superannuation funds indirectly benefit from share issues related to corporate capital raisings.

Summary of issues related to the proposed Treasury Laws Amendment (Franked distributions funded by capital raisings):

- 1. The retrospective application of the integrity measure**
- 2. Section 207-159** of the Income Tax Assessment Act outlines considerations where the issue of equity has the purpose and/or effect of funding a distribution, are **too broad in respect to partial funding or unrelated capital raisings**.
- 3. The additional costs of compliance** checks on capital raisings, equity issues and the funding of distributions will considerably outweigh the tax revenue earned.

Commencement of the Integrity measure and date of relevant distributions

Issue: The retrospective application of the integrity measure

We note the commencement of the proposed measure (Schedule 5) in TREASURY LAWS AMENDMENT (2023 MEASURES NO. 1) BILL 2023 is “The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent”.

This is consistent with AIR’s recommendations in our submission to Treasury on the draft legislation.

However, the date for relevant distributions made on or after 15th September 2022 will be considered within the scope of the integrity measure.

This use of an earlier effective date for relevant distributions to that of the commencement date of the other legislative changes (ie. 202-45(e), and paragraphs 2, 3 and 4 of section 207-159 adds unnecessary complexity in the consideration of relevant distributions.

Recommendation: That the application of amendments to section 207-159(1) should be on the same date as the other amendments in Schedule 5 on the Treasury Laws Amendment (2023 Measure No. 1) Bill 2023; that is “The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.

Comments related to the Amendments to the Income Tax Assessment Act 1997

Sections 202-35 and 45

We note and understand that the object of the frankable distribution rules is to ensure that only distributions **equivalent to realised profits can be franked** (section 202-35).

We also note that a franking entity **cannot frank a distribution if it is an un-frankable** distribution under section 202-45.

We note that in section 202-45, paragraph (e) ‘**distributions funded by capital raisings have been added to the list of un-frankable distributions.**

Section 207-159 Distributions funded by a capital raising

This section describes the circumstances under which the nature of distributions, issue of equity and funding of relevant distributions are considered linked and the purpose and effect of the issue of equity was to directly or indirectly fund all or part of a relevant distribution.

Issue: The significant **reliance on established practice** in making distributions **does not provide sufficient discretion** for an entity to change the nature of distributions **due to extraordinary financial circumstances.**

Rationale: Changes in franked distributions occurred with a number of financial institutions during the covid-19 pandemic with the support of APRA and in conjunction with capital raisings through the issue of share equity.

These circumstances were not associated with tax avoidance or manipulation of the franking system but a response to extraordinary economic circumstances for financial entities and their shareholders.

The legislative tests do not contemplate the need for entities to react to challenging corporate circumstances that require unusual capital raising, equity issue and franked distributions.

Recommendation: The tests for consideration of relevant distributions should include circumstances that relate to exceptional economic events that require unplanned capital raisings or distributions.

Issue: The testing of the linkage between the funds raised through issue of equity at a different time and in different amounts to a relevant franked dividend is too broad.

Rationale: It is noted that the Explanatory Memorandum (Effect and purpose of the issue of equity interests) that an entire distribution is unfranked to **deter entities** from entering into artificial arrangements.

However, the unintended consequence of this penalty is that the vast majority of smaller shareholders (eg. individual retirees) will be punished by losing their dividend franking when they were not involved in the capital raising or aware of any artificial arrangements.

Recommendation: If part of the funding of a franked distribution is linked to some of the capital raised via an equity issue, then **the distribution should be partly franked not entirely unfranked.**

Additional costs of compliance and self-assessment process

Issue: The ongoing additional costs by shareholders, franking entities and government on compliance checks and capital raisings, equity issues and the funding of distributions could considerably outweigh the additional tax revenue gained by this measure.

Rationale: This assessment process of this measure requires taxpayers to self-assess their compliance. This is very difficult for shareholders who may not have sufficient information to determine their liability. It will be likely that different recipients of distributions from the same entity will come to different determinations. The Tax Commissioner will likely be required to provide rulings on specific distributions to ensure consistency of compliance amongst recipients.

It is also likely that listed companies will reduce or cease issuing franked special dividends to shareholders (for legitimate reasons like better than expected performance) to reduce the compliance burden on them and their shareholders if a possible linkage could be made to a capital raising sometime before or after the distribution.

The legislation does not provide sufficient consideration to the amount of administration required to assess compliance by shareholders, corporate entities and the ATO.

Recommendation: That the legislation and/or government contemplate ways to reduce the administrative burden of assessment and compliance that will affect shareholders and corporate entities caused by the implementation of these measures.