



31 March 2023

Committee Secretary
Senate Standing Committee on Economics (Legislation)
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Committee Secretary,

Treasury Laws Amendment (2023 Measures No. 1) Bill 2023

The Corporate Tax Association (CTA) welcomes the opportunity to make a submission on the *Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (Bill)*.

The CTA is the key representative body representing over 150 of the major companies in Australia on tax issues impacting the large corporate sector. The majority of the CTA membership are large Australian listed entities. A list of CTA members and further information about the CTA can be found on our website at www.corptax.com.au.

Firstly, we commend the Government for addressing our concerns (no doubt also expressed by others) with the initial Exposure Draft (ED) dealing with equity funded distributions. The proposed amendments ensure there needs to be both a non-incidental purpose and principal effect of the capital raising to fund a distribution. This should in theory limit the potential impact of the rules to extra-ordinary capital management activities and only capture distributions made from 15 September 2022¹.

Secondly, our comments below are limited to Schedule 5 (equity funded distributions) only. At a policy level, if it is accepted that the imputation system is designed to "trap" certain franking credits and minimise imputation credit streaming, we have no major concerns with the intent of the proposals in Schedule 4 (off-market share buybacks) as an integrity measure. Our observations below are directed towards the impact on the efficiency of the capital markets in relation to Schedule 5 (equity funded distributions).

Practical Concerns Do Remain

While the proposed changes in the current bill are welcome, concerns exist primarily due to the potential uncertainty with how the rules will operate in practice. Like most principle-based integrity rules, the current proposal does not provide a bright line test. Tax outcomes are very much dependent on the particular facts and circumstances.

¹ A copy of our joint submission on the Exposure Draft can be found [here](#).

Whilst this is understood (and in fact we would say is a necessary design feature) it leads of course to a degree of uncertainty. In the publicly listed environment, giving listed groups and their shareholders certainty in taxation treatment is paramount (particularly as the amount of tax at risk could be substantial). This will in most (if not all) cases of capital raising and distributions which are close in time and outside standard interim and final dividends, require an ATO private ruling.

We suspect this will be most relevant in cases where capital is raised and:

- there is no history of payment of dividends, such as where a company is recently listed; or
- where special dividends are paid both before or after a capital raising when some amount (however small) is distributed to shareholders in a later event; or
- partially underwritten dividend reinvestment plans; or
- M&A transactions.

While examples have been included in the EM to clarify the types of arrangements where the provisions should and should not apply, these are of course no more than guide rails. In our view, practical public guidance from the ATO is required to ensure the market is more informed of the potential impact of the rules. In this respect, a Law Companion Ruling and Practical Compliance Guideline would demonstrate how the ATO will allocate its compliance resources to assess risks with the new provisions and administrative approaches it may take². The guidance should be proportionate to the revenue at risk and not be overengineered given the budget estimate for the measure is expected to raise \$10 million per year from the income year 2022-23 to 2026-27 (see p5 of the EM).

We would suggest the Committee recommend the ATO consider issuing public guidance as a priority.

Should you have any questions, please do not hesitate to contact Michelle de Niese on [REDACTED] or Paul Suppree on [REDACTED]

Yours sincerely,



Michelle de Niese
Executive Director



Paul Suppree
Assistant Director

² Refer to [PCG 2016/1 Practical Compliance Guidelines: purpose, nature and role in ATO's public advice and guidance](#), in particular paragraph 23.