Law Council
OF AUSTRALIA
Business Law Section

31 March 2023

Senator Jess Walsh
Chair
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Senator Walsh

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

1. The Business Law Section of the Law Council of Australia welcomes the opportunity to provide a submission to the Senate Economics Legislation Committee (**Committee**) in response to its inquiry concerning the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (Cth) (**Bill**).

2. This submission is made by the Financial Services Committee (**FSC**) and the Taxation Committee, both of the Business Law Section (collectively the **Committees**).

Comments of the Financial Services Committee

3. The FSC seeks only to respond to Schedule 1 to the Bill, which relates to the registration of providers and assisted decision making.

Schedule 1, Part 1—Multiple registrations of relevant providers

4. The amendments proposed in Part 1 of Schedule 1 appear to address the risk of a relevant provider providing personal financial product advice to a retail client without meeting their obligation to be registered on the Financial Advisers Register, which would involve the commission of an offence.

5. The FSC supports the amendments proposed in Part 1. However, the FSC makes one comment in relation to paragraph 1.14 of the Explanatory Memorandum to the Bill (**EM**), which reads:

> *The amendments limit the risk of an inadvertent breach of the law if the licensee who registered the relevant provider ceases to authorise them. Without these amendments, when the licensee who registered a relevant provider revokes their authorisation, the relevant provider could become unregistered and unknowingly give advice while authorised by another licensee.*

6. The FSC suggests the following amendment to paragraph 1.14 (adding the underlined text) which would better reflect what the FSC understands to be the intended meaning:

> *The amendments limit the risk of an inadvertent breach of the law if the licensee who registered the relevant provider ceases to authorise them. Without these amendments, when the licensee who registered a relevant provider revokes their authorisation, the relevant provider could become unregistered and ~~unknowingly~~ give advice without being aware that they are no longer registered on the Financial Advisers Register ~~while authorised by another licensee~~."*

Schedule 1, Part 2—Assisted decision making

7. Part 2 of Schedule 1 proposes an amendment to the *Corporations Act 2001* (Cth) (new section 921ZF) which would allow the Australian Securities and Investments Commission (**ASIC**) to use technology to assist in the decision-making process when deciding an application relating to the registration of a relevant provider.

8. As a general principle, the FSC does not object to the adoption of measures that facilitate ASIC making decisions in a timely and cost-effective manner.

9. However, the FSC is concerned that assisted decision-making processes which are not well designed or carefully implemented could adversely impact individuals and businesses who are affected by a decision that is made in an automated manner.

10. Therefore, the FSC considers that, before introducing an assisted decision-making process, ASIC should be required to document:

    (a) its assessment of the risks of using technology in the place of humans to make the decision; and

    (b) what measures it has taken to mitigate those risks.

11. The FSC also considers that, after the implementation of the process (for example, 12 months from commencement), there should be an independent review of decisions made under the assisted decision-making process to assess whether:

    (a) the measures ASIC has taken to manage the above-mentioned risks are adequate; and

    (b) any changes to the process should be made to better manage those risks.

Comments of the Taxation Committee

12. The Taxation Committee seeks to respond to Schedules 3–5 to the Bill.

Schedule 3, Part 1—Obligations relating to the provision of tax agent services

13. The Business Law Section of the Law Council is an external professional association member of the Tax Practitioners Board (**TPB**) Tax Practitioner Governance and Standards Forum (**TPGSF**). The Taxation Committee has had the opportunity to contribute to the joint submissions made by external professional association members of the TPGSF (**Joint Bodies**) to the Treasury as part of its consultation on the Implementation of the Government's response to the Review of the Tax

Practitioners Board (**Joint Submission 1**),[1] and to the Committee as part of the current inquiry (**Joint Submission 2**).

14. Joint Submission 2 maintains the previously expressed concerns of the Joint Bodies relating to the proposed amendments to the object clause in section 2-5 of the *Tax Agent Services Act 2009* (Cth) (**TASA**)[2] and to giving the Minister the ability to change the Code of Professional Conduct by legislative instrument rather than by legislation (proposed section 30-12).[3] The Business Law Section endorses both Joint Submissions and now wishes to supplement Joint Submission 2 by elaborating further on its opposition to both of the above-mentioned proposed amendments.

Object clause

15. The main objection of the Taxation Committee (and the Joint Bodies) to the proposed amendment to the object clause concerns the use of the new words and concept 'integrity of the tax system'. This concept is likely to create uncertainty and conflict. The Taxation Committee adopts and repeats Joint Submission 1 but wishes to add the following.

16. The new words are not defined, and may connote some vague and uncertain duty to the revenue additional to existing legal obligations of tax practitioners as professionals and as taxpayers.

17. Any duty to the revenue is a matter for the Australian Taxation Office (**ATO**) only and not the TPB. Therefore, the new words further undermine the independence of the TPB from the ATO, and further conflate the respective roles of the ATO and the TPB.

18. Item 4 of the Code of Professional Conduct (**Code**) (section 30-10(4) of the TASA) imposes a duty on tax practitioners to 'act lawfully in the best interests of your client'. This requires the practitioner to do what is best for their client, subject to the law. The proposed new wording in the object clause connotes a duty of the practitioner to the 'integrity of the tax system', whatever that might mean. The Taxation Committee is of the view that the proposed obligations are incompatible as practitioners cannot serve two masters: their clients and the tax system.

19. In these circumstances, the Taxation Committee submits that any reference to the integrity of the tax system be deleted from the proposed amendment to the object clause. Without those words the object will be clearer and less misleading. As such, the Taxation Committee suggests that proposed new section 2-5 of the TASA be amended as follows:

    (1) The object of this Act is to support public trust and confidence in the integrity of the tax profession ~~and of the tax system~~ by ensuring …

20. The integrity of the tax profession is and should be the central focus of the TPB, as opposed to the integrity of the tax system which is, and should be, the central focus of the ATO. By ensuring the integrity of the tax profession, the TPB will perform its proper role in the legislative scheme.

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[1] External professional association members of the Tax Practitioners Board Tax Practitioner Governance and Standards Forum, Submission to the Treasury, *Implementation of the Government's response to the Review of the Tax Practitioners Board* (11 December 2022).
[2] See Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 sch 3, pt 1, cl 1.
[3] Ibid sch 3, pt 1, cl 3.

Power to amend the Code of Professional Conduct by legislative instrument

21. The Taxation Committee opposes the proposed new section 30-12 of the TASA, giving the Minister power to amend the Code by legislative instrument on the basis that the subject matter is one—consistent with established principle, policy and practice—which should be dealt with in primary legislation (that is, the TASA) and not in a legislative instrument. Changes to the Code should only be made by Parliament by way of legislative amendment.

22. The Taxation Committee refers to the following evidence of established principle, policy and practice. The *Legislative Instruments Act 2003* (Cth) (which has since been renamed as the *Legislation Act 2003* (Cth)) (**Legislation Act**) was, according to the Attorney-General in the second reading speech for its introduction, intended on a bipartisan basis to give effect to the recommendations of the Administrative Review Council (**ARC**) in its 1992 report *Rule Making by Commonwealth Agencies*. Recommendation 2 of the ARC report relevantly stated:

> *The following criteria for the division of content between primary and other forms of legislation should be incorporated into the Legislation Handbook:*
>
> > *'The following matters should be implemented only through Acts of Parliament:*
> >
> > - *significant questions of policy including new policy or fundamental changes to existing policy;*
> > - *rules which have a significant impact on individual rights and liberties; …*
> > - *administrative penalties for regulatory offences …*[4]

23. The current *Legislation Handbook* published by the Department of Prime Minister and Cabinet states:

> *1.10 While it is not possible or desirable to provide a prescriptive list of matters suitable for inclusion in primary legislation and matters suitable for inclusion in subordinate legislation, the following are examples of matters generally implemented only through Acts of Parliament: …*
>
> *(b) significant questions of policy including significant new policy or fundamental changes to existing policy;*
>
> *…*
>
> *(d) provisions imposing obligations on individuals or organisations to undertake certain activities (e.g. to provide information or submit documentation, noting that the detail of the information or documentation required may be included in subordinate legislation) or desist from activities (e.g. to*

[4] Administrative Review Council, *Rule Making By Commonwealth Agencies* (Report No 35, 26 March 1992) 16, rec 2.

prohibit an activity and impose penalties or sanctions for engaging in an activity);

(e) provisions creating offences or civil penalties which impose significant criminal penalties (imprisonment or fines equal to more than 50 penalty units for individuals or more than 250 penalty units for corporations);

(f) provisions imposing administrative penalties for regulatory offences (administrative penalties are imposed automatically by force of law instead of being imposed by a court); ….

(l) amendments to Acts of Parliament (noting that the continued inclusion of a measure in an Act needs to be examined against these criteria when an amendment is required).[5]

24. *Odgers' Australian Senate Practice* refers in Chapter 15 to the scrutiny of delegated legislation by Senate Committees and relevantly states:

> *The* [Standing Committee on Regulations and Ordinances] *scrutinises each instrument to ensure:*
>
> *…*
>
> *(d) that it does not contain matter more appropriate for parliamentary enactment.*
>
> *These terms of reference have governed the committee's proceedings throughout its history with only minor amendment in 1979 largely occasioned by creation of the Administrative Appeals Tribunal. The four principles are interpreted broadly to include every possible deficiency in delegated legislation affecting parliamentary propriety and personal rights. On this broad approach the committee has interpreted: …*
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> *scrutiny principle (d) as encompassing all circumstances in which the use of delegated rather than primary legislation may be regarded as improperly circumventing the full legislative process, including instruments anticipating matters contained in bills and broad exemptions operating as de facto amendments to primary legislation.*[6]

25. The Taxation Committee submits that the proposed amendment is contrary to established principle, policy and practice for the following reasons.

26. *First*, the Code is a cornerstone of the TASA and its fundamental policy intent. This is self-evident so its amendment or supplementation should only be by legislative amendment not by legislative instrument. This is apparent from the statutory object of the TASA, which states (emphasis added):

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[5] Department of Prime Minister and Cabinet, *Legislation Handbook* (February 2017) 2.

[6] Department of the Senate, *Odgers' Australian Senate Practice* (14th ed, 2016) 436.

*The object of this Act is to ensure that *tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct. This is to be achieved by (among other things):*

> *(a) establishing a national Board to register tax agents and BAS agents; and*
>
> *(b) introducing a *Code of Professional Conduct for *registered tax agents and BAS agents; and*
>
> *(c) providing for sanctions to discipline registered tax agents and BAS agents.*[7]

27. It follows that the proposed amendment, by authorising a Minister to supplement the Code by legislative instrument, is contrary to the policy underlying the *Legislative Instruments Act 2003* (Cth), as reflected in the 1992 ARC recommendation, the current *Legislation Handbook* (at paragraph 1.10(b)) and *Odgers' Australian Senate Practice* (scrutiny principle (d)).

28. *Second*, the Code is central to the registration and disciplinary scheme of the TASA. Not only is compliance with the Code a factor for applicants for continued registration as tax agents, sanctions for failure to comply with the Code include being subject to orders of the TPB (such as an order to only provide services under supervision or as otherwise specified by the TPB), suspension and termination as a tax or BAS agent (see sections 30-15 to 30-30 of the TASA).

29. It again follows that the proposed amendment, by authorising a Minister to supplement the Code by legislative instrument, is contrary to the policy underlying the Legislation Act, as reflected in the 1992 ARC recommendation, the current *Legislation Handbook* (at paragraph 1.10 (b)–(f) and (l)) and *Odgers' Australian Senate Practice* (scrutiny principle (d)).

30. In these circumstances the Taxation Committee recommends that, where amendment or supplementation of the Code is to occur, this should be by way of legislation only.

Schedule 4—Off-market share buy-backs

31. In relation to Schedule 4 of the Bill, the Taxation Committee considers that:

    (a) the legislative response to address the level of streaming of franking credits to particular entities goes beyond what is necessary to address the concerned mischief;

    (b) there are alternative avenues to address the relevant mischief, including:

        (i) amending the arbitrary discount cap of 14 per cent in the tender process of a 'Dutch auction' off-market share buy-back, to a lower discount cap calculated by reference to the particular split between the 'capital' and 'dividend' component in the buy-back prices; and

        (ii) adjusting the 'at risk' rule in relation to the period in which participants must hold shares 'at risk' before participating in a buy-back; and

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[7] *Tax Agent Services Act 2009* (Cth) s 2-5.

(c) if the measure is to be enacted, the ATO should provide further guidance (supplementing its already existing administrative practice guidance) clarifying the application of the tax laws between off-market share buy-backs and on-market share buy-backs.

32. Schedule 4 to the Bill seeks to amend the *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**) to align the income tax treatment as between off-market share buy-backs undertaken by listed public companies with on-market share buy-backs.

33. The amendment proposed in Schedule 4 to the Bill seeks to prevent inappropriate streaming of franking credits to shareholders through the current model of off-market share buy-backs undertaken by a number of Australia's large listed companies.

34. The Taxation Committee is of the view that it should be possible to deal with the perceived mischief without unnecessarily and inappropriately penalising the undertaking of off-market share buy-backs or causing a dilution of franking through the penalty regime.

35. The Taxation Committee considers that the penalty regime is the effective wastage of franking credits, which would otherwise have been attached to the dividend component of the share buy-back price.

36. Off-market share buy-backs are an important capital management tool to facilitate and enable unlisted public companies to undertake various transactions. The basis upon which this form of buy-back has been undertaken is heavily regulated by the terms of the ATO's practice. This ATO practice included a number of administrative decisions and processes as to the manner in which an off-market share buy-back could be undertaken by a listed company (see Practice Statement Law Administration PS LA 2007/9 (**PSLA 2007/9**)). These rules dealt with a number of aspects associated with the operation of the tax rules in relation to the treatment of these arrangements.

37. The ATO arrangements were effectively a compromise, seeking to facilitate the particular form of off-market share buy-backs within the constraints of what could be regarded as an appropriate level of allocation of particular taxpayers who wish to participate because of their particular tax status.

38. The Taxation Committee considers that there are a number of measures that could be undertaken by adjusting some of the financial levers which were imposed as a result of administrative practice through the ATO's PSLA 2007/9. These include, for example:

(a) Changes to the operation of the so-called 'at risk' rules for participants to benefit through an off-market share buy-back. These could extend to, for example, extending the 'at risk' period or adjusting the timetable to prevent participants acquiring shares after the announcement of the buy-back. Currently, under the agreed prescribed administrative rules, there is generally a period of 3–4 days, where a participant can acquire securities and participate in the buy-back and satisfy the provision of the at-risk rules.

(b) More flexible application of the maximum discount. The Commissioner has indicated in PSLA 2007/9 that the discount level is a relevant consideration in the application of section 177EA of the *Income Tax Assessment Act 1936* (Cth), being the general anti-avoidance rule. The maximum discount from the market

value of the security has been set at an arbitrary 14 per cent (refer to paragraph [123] of PSLA 2007/9). The percentage limits, for a particular buy-back involving a franked dividend component, a maximum discount at which shareholders disposing of securities can reserve on the buy-back in the tender process. In effect, it represents the discounted amount, which the shareholder is prepared to provide.

(i) As a general observation, the greater the potential level of discount from the market value, the more likely there would be an effective streaming of franking credits to taxpayers which can take advantage of those credits.

(ii) The appropriate level of discount should not have been prescribed as an arbitrary discount for all buy-backs. As the split between the buy-back price between capital and income varies, the relevant maximum discount percentage should have been capable of adjustment. The Taxation Committee would suggest consideration of a lower discount amount, calculated by reference to the particular split between capital and dividend in the buy-back amount.

39. The Taxation Committee submits that there are numerous other factors that can be adjusted to appropriately deal with the perceived mischief of the proposed measure without imposing an effective penalty on undertaking an off-market buy-back by a listed company.

40. As stated above, the mechanisms for appropriate capital return are critical to ensure that public companies can effectively undertake appropriate corporate transactions. The Taxation Committee does not believe it is necessary to include the complex provision suggested. The existing anti-streaming provisions should effectively be able to be dealt with in the same manner where the tax administration currently deals, or would deal, with unlisted buy-backs under the regime, which the Taxation Committee suggests should be created.

41. The Taxation Committee submits that changes to the rules dealing with off-market share buy-backs by listed public companies may inadvertently create particular anomalies associated with companies undertaking on-market share buy-backs.

42. This is because, to date, the administration of the tax rules associated with on-market buy-backs has allowed the relevant proceeds to be sourced from the share capital of the company. Without further guidance from the ATO, there is significant concern that the alteration to the rules dealing with off-market share buy-backs may inadvertently force some amount of the proceeds of a buy-back price for on-market share buy-backs to be sourced from profits. This is not an appropriate outcome.

43. If the measure is to proceed, the Taxation Committee believes it will be critical for the ATO to issue clear and revised guidance in relation to the issues associated with the administration of off-market share buy-backs and on-market share buy-backs by listed public companies. The administration of these rules should not apply so as to create an inappropriate penalty through franking credit wastage.

44. The Taxation Committee submits that:

(a) franking credits are regarded by shareholders as being valuable, and should not be removed or lost by virtue of a company undertaking an off-market share

buy-back, even if part of the buy-back price may have been regarded as being sourced from profits;

(b) there are numerous amendments, such as those suggested above, that could be made to the manner in which the particular form of buy-back arrangement, which has led to the perceived mischief, to be regulated in a way to prevent or deal with what may be regarded as inappropriate streaming of franking credits;

(c) this can and should be done without forcing all off-market share buy-backs to be treated in the same way as on-market share buy-backs; and

(d) it would be possible to achieve this outcome, either through a change to the current practice statement issued by the ATO in relation to the administration of off-market buy-backs to get together with, if appropriate, the entrenchment of particular and specific rules that apply to off-market share buy-backs, which allow those buy-backs to proceed but without the significant tax penalty that is currently contemplated by these proposed measures.

Schedule 5—Franked distributions funded by capital raisings

45. In relation to Schedule 5 of the Bill, the Taxation Committee considers that:

(a) while the proposed measure in the Bill contains welcome changes from the corresponding exposure draft legislation, concerns with the wide scope and disproportionate effect of the measure remain;

(b) given the nature of the impact that the provisions may have on capital management activities, the measure (if enacted) should provide for the application of the measure to be assessed by reference to:

(i) the issue of the equity interests as a whole; and

(ii) the relevant distribution as a whole; and

(c) the proposed measure (if enacted) should apply only to the relevant part of the distribution funded by the relevant capital raising activities, rather than applying to the whole distribution.

46. Schedule 5 seeks to amend the ITAA 1997 to prevent certain distributions to shareholders funded directly or indirectly by capital raisings from being frankable.

47. The proposed provisions in Schedule 5 seek to address concerns first raised in the ATO's Taxpayer Alert TA 2015/2 (**TA 2015/2**). TA 2015/2 was concerned with arrangements that displayed the following features:

(a) A company with a significant franking credit balance raises new capital from existing or new shareholders. This may occur through issuing renounceable rights to shareholders. Shareholders may include large institutional superannuation funds.

(b) At a similar time to the capital raising, the company makes franked distributions to its shareholders, in a similar amount to the amount of capital raised. This may occur as a special dividend or through an off-market buy-back of shares, where the dividend forms part of the purchase price of the shares.

(c) Overall:

(i) there is minimal net cash inflow to or outflow from the company;

(ii) the net asset position of the company remains essentially unchanged (in a buy-back variant, the number of shares on issue following the transaction may be marginally reduced due to the difference between the buy-back price and the issue price of the new shares) but their franking account is significantly reduced; and

(iii) there is minimal impact on the shareholders, except in some cases they may receive refunds of franking credits, and in the case of buy-backs, they may also get improved capital gains tax outcomes.

(A) The franked distributions (or franked component of the buy-back consideration) may be unusually large compared to ordinary dividends previously declared and paid by the company (as distinct from a typical dividend reinvestment plan applicable to an ordinary regular dividend).

(B) The franked distribution may be receivable by all existing shareholders of the company.

48. The ATO recently observed in its 2021 Reportable Tax Positions Schedule Finding Report that its:

> *… risk identification processes and assurance programs have confirmed* [that arrangements flagged as being reviewed pursuant to TA 2015/2] *are no longer prevalent in the large public and multinational business population.*[8]

49. The Taxation Committee acknowledges that two significant improvements have been made to the Bill since the release of the exposure draft, namely:

(a) the removal of the retrospective application of the new measure to 2016; and

(b) the adjustment of the 'principal effect' and 'purpose' tests associated with the capital raising to require that they are cumulative rather than alternatives—that is, that both tests must be satisfied.

50. However, the Taxation Committee continues to be of the view that the proposed provision is unnecessary and overly complex. The Taxation Committee believes that the level of complexity associated with the provision will:

(a) unnecessarily and inappropriately restrict and limit:

(i) the way in which the capital of companies is managed; and

(ii) the payment of dividends to shareholders; and

[8] Australian Taxation Office, *Findings report RTP – Public and multinational businesses* (Web Page, 13 October 2022).

(b) create an unnecessary need to seek ATO guidance in relation to the payment of dividends and, potentially, capital raisings.

51. The Taxation Committee also remains concerned about:

    (a) the wide scope of the threshold requirements for the operation of the proposed measure; and

    (b) the disproportionate effect of the measure when it is applied, which would cause the entire distribution to be unfrankable even where the equity interests issued may only fund part of the distribution.

52. Further, while the measures seek to address the issues raised in TA 2015/2, the proposed provision is not practically limited to or conditional upon the matters dealt with in TA 2015/2. This creates potential to result in significant, unintended consequences.

53. While the measure now requires consideration of both the principal effect of the issue of the equity interests, and the purpose of the issue of the equity interests, it remains sufficient for the measure to apply—and the whole of a distribution to be unfrankable—that the equity raising funds only *part* of the distribution, either directly or indirectly.

54. The application of the measure should be tested in respect of the capital raising as a whole and the distribution as a whole.

55. Testing the measure in respect of part of the relevant distribution and part of a capital raising will lead to inappropriate and potentially unintended operations of the measure. The whole distribution should not cease to be frankable when the capital raising activity only funds a part of the distribution.

56. If the measure is to be legislated, it should be capable of applying to only that part of the distribution that is funded by the capital raising.

57. The Taxation Committee submits that the Bill (as it is currently drafted) would materially and adversely affect many public companies. The provisions could prohibit a company with significant retained earnings from making a franked distribution where it has recently made large investments using existing cash reserves and thus needs to raise capital to fund the distribution. Raising capital in such circumstances is likely to result in the company coming within the scope of the proposed measure.

58. This creates an inappropriate commercial limitation where a company can raise capital to pay working capital expenses and retain cash to pay a special dividend, but cannot pay a special dividend using cash resources and then raise capital. This is because the coverage of equity issues includes any time before, during or after the distribution of dividends.

59. The Taxation Committee notes that the ability of a company to provide fully franked dividends with certainty reduces its cost of capital. It reduces the incentive for companies to undertake debt raising and increases the power of large corporates which have stronger balance sheets and cash reserves. The Taxation Committee believes that there are also a number of general policy impacts of the measure, including:

(a) The measure would increase the desire to pay less Australian tax, which may be exacerbated if the company has large existing franking reserves. Currently, there is an incentive for companies to maximise Australian tax paid on their global operations to facilitate the benefits (dividends and selective share buy-backs) to shareholders.

(b) The measure would have a greater impact on small- to medium-sized business where tax is paid by small growth companies needing to raise cash for funding and growth. The new measures may restrict the ability to raise capital with a greater focus on raising extra debt.

(c) The new measure would reduce the potential to provide special dividends to shareholders, and create uncertainty for shareholders as to the availability of franking credits.

60. The Taxation Committee believes that the threshold applicable to the existing dividend practice of the company is inappropriately expressed because it effectively creates a legislative requirement that companies must maintain their dividend practice within a particular range.

61. The Taxation Committee also believes that the uncertainty caused by the threshold may unnecessarily increase the number of companies seeking guidance from the ATO (for example, through a form of ruling) to confirm the tax treatment of the distribution. This may be the case even where the distribution has a tenuous link with a capital raising conducted by the company either before, during, or after the dividend.

62. A narrowly expressed gateway, which depends heavily on the manner in which the ATO administers the provisions, is not appropriate or good tax practice. It does not take into account the fact that many companies, particularly smaller companies, do not have relevant and regular dividend practices. The measure is most likely to impose unnecessary restrictions on those companies.

63. In the Taxation Committee's view, the approach to the drafting in the proposed Bill is not appropriate because:

(a) it does not properly focus on the perceived mischief identified in TA 2015/2; and

(b) it fundamentally changes the way in which companies need to manage the payment of dividends and the funding of those dividends.

64. Given the uncertainty, administration and cost that is likely to be imposed on taxpayers, the Taxation Committee submits that the measure is not appropriate. The current Treasury estimates are that the new measure is set to raise only $10 million a year. The complexity of the measure and the associated economic benefit would be entirely disproportionate to the perceived mischief and the new obligations that would be imposed on taxpayers.

Conclusion and further contact

65. The Committees would be pleased to discuss any aspect of this submission.

66. Please do not hesitate to contact Ms Pip Bell, Chair of the FSC, at pbell@pmclegal-australia.com (with respect to submissions relating to Schedule 1 of the Bill only) or Mr Justin Byrne, Chair of the Taxation Committee, at (justin.byrne@qldbar.asn.au) (with respect to the remainder of the submission).

Yours sincerely

Philip Argy
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