


# ***TA 2015/2 - Franked distributions funded by raising capital to release franking credits to shareholders***

 This cover sheet is provided for information only. It does not form part of *TA 2015/2 - Franked distributions funded by raising capital to release franking credits to shareholders*


 View our [video](#) about this Taxpayer Alert.

The Government has announced an intention to introduce a specific measure preventing the distribution of franking credits where a distribution to shareholders is funded by particular capital raising activities. The measure is expected to address issues raised in this Alert. The measure will apply to distributions made after 12:00pm (AEDT) on 19 December 2016.

The Government's announcement can be found in the [2016-17 Mid-Year Economic and Fiscal Outlook](#), Appendix A: Policy decisions taken since the 2016 PEFO, Revenue Measures at pages 112 to 113.

The Government has announced that from 7:30pm AEDST on 25 October 2022, there will no longer be a dividend component in respect of the price paid by a listed public company undertaking an off-market share buy-back. The entire buy-back price paid for the share will be treated as capital proceeds for a share held on capital account, or as the entire proceeds for a share held as trading stock or on revenue account (but not as trading stock).

Retrospective tax law changes have effect for a period before the date of enactment once the legislation is passed. See [Administrative treatment of retrospective legislation](#).

 This document has changed over time. This version was published on 7 May 2015



# Taxpayer Alert

TA 2015/2

## Franked distributions funded by raising capital to release franking credits to shareholders

❶ The Government has announced that from 7:30pm AEDST on 25 October 2022, there will no longer be a dividend component in respect of the price paid by a listed public company undertaking an off-market share buy-back. The entire buy-back price paid for the share will be treated as capital proceeds for a share held on capital account, or as the entire proceeds for a share held as trading stock or on revenue account (but not as trading stock).

Retrospective tax law changes have effect for a period before the date of enactment once the legislation is passed. See [Administrative treatment of retrospective legislation](#).

*This Alert provides a summary of our concerns about a significant or emerging higher risk tax or superannuation issue that we currently have under risk assessment.*

Refer to [PS LA 2008/15](#) for more about Alerts. See [Alerts](#) issued to date.

### Description

We are currently reviewing arrangements which display all or most of the following features:

- 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.
- 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.
- Overall:
  - a. there is minimal net cash inflow to or outflow from the company
  - b. 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
  - c. 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.
- The franked distributions (or franked component of 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).

- The franked distribution may be receivable by all existing shareholders of the company, or shareholders may have a choice as to whether to participate (for example, in a buy-back scenario).

### **What are our concerns?**

We are concerned that the arrangement is being used by companies for the purpose of, or for purposes which include, releasing franking credits or streaming dividends to shareholders. This may attract the operation of the anti-avoidance rule in [section 177EA](#) of the *Income Tax Assessment Act 1936* or other anti-avoidance rules. One immediate purported effect of these arrangements is the release of franking credits that may otherwise have been retained by the company.

If section 177EA (or other anti-avoidance rules) applies to an arrangement, there may be adverse implications at the shareholder level and the corporate level.

### **What are we doing?**

We are currently reviewing these arrangements and are engaging in discussions with taxpayers. We are developing our technical position on the arrangements.

### **What should you do?**

If you have entered into, or are contemplating entering into, an arrangement of this type we encourage you to discuss your situation with us by emailing [PGI Advice](#).

Penalties may apply to participants and promoters of this type of arrangement.

---

Date issued:	<b>7 May 2015</b>
Authorised by:	<b>Tim Dyce</b> Deputy Commissioner
Contact officer:	<b>Grahame Hager</b>
Business line:	Tax Counsel Network
Phone:	(02) 9374 8762

---