

Dividend rules mess to be unravelled

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The federal government has agreed to fix restrictive dividend rules after it bungled reforms last year which were supposed to make it easier for 40 per cent of large companies to pay dividends to their shareholders.

Company law changes introduced last June replaced the requirement that dividends be paid out of profits with a test based on balance sheet solvency, after average dividend payments slumped 25 per cent in 2009 in the global financial crisis aftermath.

But the way the law was drafted created significant accounting and tax problems in practice.

The Australian Taxation Office also significantly increased the uncertainty for companies and their investors in the wake of the change by ruling in July this year that many of this year's dividend payments could not be franked, undoing the tax advantage of a dividend payment.

"How can the capital markets be held to ransom by some ambiguity which the Tax Office has created?" Wilson Asset Management chairman Geoff Wilson asked yesterday.

"Over \$100 billion in franking credits are sitting on companies' balance sheets which should be passed on to investors. The sooner the government can sort this out the better it will be for corporate Australia and shareholders," he said.

The federal government will today release a discussion paper, obtained by *The Australian Financial Review*, that canvasses options for reworking the dividend rules. In it, Treasury backs further changes which will allow companies to have the option of choosing between the current solvency test and the old profits-based test.

"The government has responded to stakeholder feedback, particularly on the dividend payment test, and is exploring whether further refinement of the provision is needed," the Treasurer's parliamentary secretary, David Bradbury, said yesterday.

The Institute of Chartered Accountants has been urging the government to "fix this mess" for months.

"It is unlikely that the present uncertainty will be resolved unless the government takes decisive action to urgently review and clarify the intended operation of the 2010 amendments," tax counsel Yasser El-Ansary wrote in a letter to the government in mid August.

Building materials supplier Alesco and Australian Pharmaceutical Industries recently paid a dividend but were forced to warn shareholders that they were uncertain whether the payments could be franked.

"This will cause countless shareholders – especially low-income self-funded retirees – significant concern given the reliance placed on the availability of franking credits," Mr El-Ansary wrote. "It is our understanding that Treasury has been aware of our concerns in relation to this issue for a number of months but as yet no definitive action has been taken to resolve these problems."

Franked dividends include a tax credit that recognises the company has already paid tax on the income, offsetting the recipient's tax bill by that amount to prevent a double-up.

The inability to frank means companies cannot pass on credits for the tax they have paid.

The Australian Financial Review

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