

Government blasted for dividend handicap

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Company directors, lawyers and tax experts have criticised the federal government for failing to fix dividend laws that are creating uncertainty as boards determine how much they can distribute to shareholders.

Some claimed the government has deliberately delayed corrections needed to give companies flexibility in paying dividends and the associated tax credits, to avoid a revenue blow-out. "\$1.3 trillion of investors' capital [the total market capitalisation of the ASX] is being held to ransom because the government has failed to fix this problem," Wilson Asset Management chairman Geoff Wilson complained.

"On the three public company boards which I chair, we have just had our board meetings to discuss our interim results.

"The majority of our time was spent discussing the company's ability to pay fully franked dividends when the decision should not have even been an issue," he said.

The government changed the law in mid-2010 to allow companies to pay dividends based on an assets test, - loosening the old requirement to pay dividends only from profits.

But the way the law was drafted led to significant accounting and tax problems, compounded when the - Australian Taxation Office indicated in July that many dividend payments could not be franked.

A severe backlash led the government to agree to fix the rules. Treasury has consulted since November.

The four options for reform canvassed in its discussion paper include making no change, modifying the current test to one based on solvency, reverting to the former profits-based test, or allowing companies to choose between the current test or the old profits-based test.

Review overload



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SOURCE: FINANCIAL REVIEW

Former judge and corporate law doyen Bob Austin said the government had taken a “head in the sand” approach and needed to move quickly to resolve the issue.

Institute of Chartered Accountants tax counsel Yasser El-Ansary said despite the urgency, he was not sure the government had prioritised the issue above other reforms.

“There could be quite a significant cost to the budget bottom line which the government has not allowed for,” he warned.

Demand for action comes as many companies look to declare dividends.

The director of policy at Chartered Secretaries of Australia, Judith Fox, said that the bungled changes had caused enormous trouble for companies. “At the moment there is still tremendous uncertainty,” she said.

“It is great that the government is consulting on the issue, but there really needs to be a bit more urgency to fix the problem. It also means huge amounts of shareholder money are being spent on legal advice, which is not good for anyone but the lawyers.”

The CSA is calling for a solvency test and a change in terminology from “declaring” to “determining” dividends,

in line with common use.

The uncertainty also means investors could miss out on franked dividends, warns Tax Institute senior tax counsel Robert Jeremenko.

“You’ve got public companies that don’t even know what dividends they can pay,” he said.

“Business hates nothing more than uncertainty – they’ll often roll with things that aren’t in their favour, but things can’t be uncertain.”

Mr Jeremenko said the bungle highlighted the disjunction between Treasury and the Tax Office, a cause of extreme frustration.

“Why are we in a situation where the Tax Office is putting out draft interpretations that are quite boldly contradicting what Treasury is saying the intent of the legislation is?

“Even if they’re not talking to each other, they can see through public documents that they’re at odds.”

Assistant Treasurer David Bradbury declined to comment yesterday.

The Australian Financial Review



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