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Division 7A – The Critical Issues

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Presenter - Tom Delany

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Division 7A and UPEs

Objective of this Presentation

- The management of Division 7A issues in a private company context requires continual vigilance to ensure all relevant considerations are identified, understood and dealt with appropriately. This presentation will identify payments, loans, amalgamated loans and forgiven debts that may be treated as deemed dividends under Division 7A ITAA36.
- The role that the concept of “distributable surplus” has in determining whether a deemed dividend exists will be evaluated.
- Clarification on how unpaid present entitlements (UPEs) (amounts owing by trusts to companies) may be classified and managed in the context of Division 7A with particular reference to the accounting treatment that needs to be performed in recording Division 7A items in the financial statements.
- The appropriate management of existing or inherited Division 7A problems will be considered while strategies by which existing Division 7A loans can be reduced or eliminated in a tax effective manner will be explored.
- Proposed changes to the operation of Division 7A from 1 July 2019.



Distributable Surplus

- [Section 109Y ITAA 36](#) provides that there is a proportional reduction of deemed dividends so that they do not exceed the distributable surplus (as at the end of the year of income). Formula changed from 1 July 2009.
- A private company's distributable surplus for its year of income is the amount worked out using the formula:
 - Net Assets + Division 7A amounts
 - Less: Non-commercial Loans + Paid up share value + Repayments of non-commercial loans
- "Division 7A amounts" is the total of any [section 109C ITAA36](#) (payments by the company) or [section 109F ITAA36](#) (forgiveness of debt) dividends in the year of income.
- "Net assets" the amount (if any), by which the company's assets (according to the company's accounting records [TD 2009/5](#)) exceed the sum of the present legal obligations and provisions (including income tax) of the company (see [TD 2012/10](#)).
- "Non-commercial loans " means the total of any amounts that the company is taken under former section 108, or [s 109D ITAA36](#) or [s 109E ITAA36](#) (or under [s 109XB ITAA36](#)), to have paid as dividends in earlier years of income and are shown as assets in the company's account.
- "Paid-up share value " is the paid-up share capital of the company at the end of its year of income.
- "Repayments of non-commercial loans " means the total of any repayments or set offs (other than by [s 109ZC ITAA36](#)) to the company of loans or amounts that have been taken by former section 108, or [s 109D ITAA36](#) or [s 109E ITAA36](#), to be dividends.



Division 7A – Core Considerations

- Division 7A treats 3 kinds of amounts as dividends paid by a private company:
 1. Amounts **paid** by the company to a shareholder or shareholder's associate [Section 109C ITAA 36](#)... See also [Section 109CA ITAA 36](#).
 2. Amounts **lent** by the company to a shareholder or shareholder's associate [Section 109D ITAA 36](#) and [Section 109E ITAA 36](#)
 3. Amounts of debts owed by a shareholder or shareholder's associate to the company that the company **forgives** [Section 109F ITAA 36](#)
- Division 7A applies to non-residents [Section 109BC ITAA 36](#)
- An associate is defined in [section 318 ITAA 36](#).
- Deemed dividends are generally un-frankable whereas deemed dividends arising from a family law obligation may be franked, [s 109RC ITAA36](#).
- A later unfranked dividend that is set off or applied against the previous deemed dividend will not be treated as a dividend for income tax purposes, except under the franking provisions, [s 109ZC ITAA36](#).
- Division 7A applies and fringe benefits tax (FBT) does not apply where the making of a loan (or a loan that complies with [s 109N ITAA36](#)) or the forgiving of a debt gives rise to a deemed dividend, [s 109ZB ITAA36](#).
- However, FBT applies and Division 7A does not apply to a payment that would otherwise be taken by Division 7A to be a dividend and is also a fringe benefit, [s 109ZB ITAA36](#).



Payments as Dividends

- A private company is taken to pay a dividend to an entity at the end of the private company's year of income if the private company pays an amount to the entity during the year and either:
 - (a) the payment is made when the entity is a shareholder in the private company or an associate of such a shareholder; or
 - (b) a reasonable person would conclude (having regard to all the circumstances) that the payment is made because the entity has been such a shareholder or associate at some time, [s 109C ITAA36](#).
- The amount of the dividend is the amount paid, subject to [s 109Y ITAA36](#).
- Payment to an entity includes the provision of an asset for use by the entity which can include the provision of property under a lease or licence, [s 109CA ITAA36](#) - Valued at market value less any amount paid by recipient – Exceptions include:
 - [Section 58P FBT 86](#) – Minor and infrequent benefits.
 - Amounts for which a once only deduction would have been available, [s 109CA\(5\) ITAA36](#).
 - Dwellings used in association with land on which a business is carried on – [s 109CA\(6\) ITAA36](#).
 - Dwellings acquired by private companies prior to 1 July 2009 – [s 109CA\(7\) ITAA36](#).
 - Dwellings in unit complex where ownership of shares gives entitlement to living in the unit of accommodation – [s 109CA\(7A\) ITAA36](#).



Loans as Dividends (1)

- A private company is taken to pay a dividend to an entity at the end of one of the private company's years of income (the current year) if:
 - (a) the private company makes a loan (including an advance of money, provision of credit or financial accommodation) to the entity during the current year; and
 - (b) the loan is not fully repaid before the lodgment day for the current year; and
 - (c) [Subdivision D](#) does not prevent the private company from being taken to pay a dividend because of the loan at the end of the current year; and
 - (d) either:
 - (i) the entity is a shareholder in the private company, or an associate of such a shareholder, when the loan is made; or
 - (ii) a reasonable person would conclude (having regard to all the circumstances) that the loan is made because the entity has been such a shareholder or associate at some time, [s 109D ITAA36](#).
- The amount of the dividend is the amount of the loan that has not been repaid before the lodgment day for the current year or put under a complying loan agreement ([Section 109N](#)), subject to [s 109Y ITAA36](#).
- Division 7A will apply to loans made before 4 December 1997 that are varied (term or amount) on or after that day. The ATO have indicated that they will take no active compliance action where the loans are deemed to be forgiven in consequence of the operation of [s 109F\(3\) ITAA36](#), [Practice Statement PS LA 2006/2](#) (GA).



- The lodgment day is the earlier of the due date for lodgment or the actual date of lodgment.

Loans as Dividends (2)

- Multiple loans made during the year are treated as one “amalgamated loan” for that year if not repaid during the year, [s 109E ITAA36](#) subject to [s 109Y ITAA36](#).
- [Taxation Determination TD 98/22](#) demonstrates how the benchmark interest rate (5.2% 2019 year, 5.3% 2018 year) is used in calculating the minimum yearly repayment.
- The Commissioner has the discretion under [s 109Q ITAA36](#) to disregard a Division 7A dividend if the minimum yearly repayment was not made because of circumstances beyond the entity's control and the entity would suffer undue hardship if the loan was taken to be a deemed dividend.
- The Commissioner has the discretion to disregard a deemed dividend that arises because of an honest mistake or an inadvertent omission, [s 109RB ITAA36](#) and to extend the period for repayments of an amalgamated loan, [s 109RD ITAA36](#).
- Seven year (unsecured) and 25 year (secured against real property with a value of at least 110% of the loan) loans exist and seven year loans can be converted to 25 year loans.
- Some repayments of loans are disregarded, [s 109R ITAA36](#).



Payments and Loans – Not Dividends

- Payments of genuine debts (arm's length basis) ([Section 109J](#));
- Payments and loans to other companies **other than** in the capacity as trustee ([Section 109K](#)), See *Di Lorenzo Ceramics Pty Ltd v FCT* (2007) 67 ATR 42;
- Payments and loans that are otherwise assessable or that are specifically excluded from assessable income ([Section 109L](#));
- Loans made in the ordinary course of business on ordinary commercial terms ([Section 109M](#)) see also [Taxation Determination TD 2008/1](#);
- Loans that meet criteria for minimum interest rate ([Benchmark Interest Rate](#)) and maximum term ([Section 109N](#)) – for a complying loan agreement see [Taxation Determination TD 2008/8](#) – The loan agreement must be in writing;
- Certain loans and distributions by liquidators ([Section 109NA](#)) if paid within 18 months and [s 47\(1\) ITAA36](#) will also apply; and
- Loans that are for the purpose of funding the purchase of certain ESS interests under an employee share scheme ([Section 109NB](#)).



Forgiven Debts

- Under [s 109F ITAA36](#) a private company is taken to pay a dividend to an entity (at the end of the company's income year) if all or part of a debt owed to the company by the entity is forgiven during the year, [TD 2008/14](#), subject to [s 109Y ITAA36](#).
- A debt is also taken to be forgiven if the private company will not insist on the entity paying the debt, [s 109F\(6\) ITAA36](#).
- Whether a debt is "forgiven" is determined in accordance with the commercial debt forgiveness provisions in [Division 245 ITAA97](#).

Under [s 109G ITAA36](#), a forgiven debt will not be treated as a deemed dividend:

- The debt is owed by another company (other than a debt owed by a company in the capacity of trustee);
- The debtor has become bankrupt or Pt X of the Bankruptcy Act 1966 applies;
- The debt that is forgiven relates to a loan that is otherwise deemed to be a dividend by s 109D or former s 108 for that year or an earlier one.
- The Commissioner is satisfied that the reason for the forgiveness was that payment would have caused the entity undue hardship and the entity had the capacity to repay the debt when advanced but subsequently lost the ability to pay the debt.



Some Special Rules and Exceptions (1)

- Commissioner may disregard the operation of Division 7A or allow dividend to be franked [Section 109RB ITAA 36](#) and [Taxation Ruling 2010/6](#) see also [PS LA 2011/29](#). The factors the Commissioner will consider in determining whether to exercise the discretion are:
 - the circumstances that led to the relevant mistake or omission;
 - the extent to which corrective action had been taken and how quickly action had been taken;
 - whether Division 7A had previously operated in respect of the relevant entities and in what circumstances; and
 - any other matters that the Commissioner considers relevant.
- It is necessary for to be able to demonstrate that the relevant breach of Division 7A resulted from an **honest mistake or inadvertent omission** and an application to the Commissioner is necessary to request him to exercise his discretion (include all relevant information).
- [Section 109XA ITAA 36](#) provides that where a trustee makes a payments to a shareholder/associate and the payment discharges a present entitlement of the share holder that arose as a result of an **unrealised gain** at a time that a company has an unpaid present entitlement or the company will have an unpaid present entitlement before its lodgement date then the payment is a deemed dividend.
- [Section 109T ITAA 36](#) payments or loans made through interposed entities can also be a deemed dividend [TD 2018/D3](#) confirms that the payment from the first company can be an actual dividend.



Some Special Rules and Exceptions (2)

- [Section 109U ITAA 36](#) provides that payments or loans through **interposed entities** relying on guarantees may be deemed dividends, [TD 2011/16](#).
- By comparison [s 109UA ITAA36](#) deals with guarantees provided by a company with a distributable surplus to a lender where the lender provides the loan to a shareholder/associate. [Section 109V ITAA 36](#) determines the amount of payment while [s 109W ITAA 36](#) determines the amount of loan made through an interposed entity to a target entity.

In the case of a **relationship breakdown** [TR 2014/5](#) provides that money or property to be paid or transferred under a family law arrangement/order:

- to a shareholder out of company profits, will be a dividend, [s 44 ITAA36](#);
- to an associate of a shareholder will be deemed dividend, [s 109C\(3\) ITAA36](#), frankable as paid under a family law obligation, [s 109RC ITAA36](#). [Section 109J ITAA36](#) is considered to have no application to prevent the amount from being treated as a dividend under [s 109C ITAA36](#).
- A deemed dividend may arise if a **shareholder dies** and the debt is forgiven to the deceased's estate, [ATO ID 2012/77](#) – positive action to forgive the debt by the company is required.
- The Division 7A loan is the responsibility of the executor upon death and they must check on whether payments on the loan have been made throughout the life of the deceased.



Unpaid Present Entitlement – Post 16 December 2009

- The Commissioner has indicated he will apply Division 7A where there is an unpaid present entitlement (UPE) from a trust to an associated private company, [TR 2010/3](#).
- The rationale is that if a present entitlement is unpaid, it is at least a form of financial accommodation and therefore a loan as defined.
- If the trust is a shareholder or, as may be more common, an associate of a shareholder in the private company, then there is a direct application of [s 109D ITAA36](#).
- The mischief that the Commissioner's approach on this issue is directed to is that by creating a present entitlement – without a payment of funds – the trustee is avoiding tax on what would otherwise be accumulated income and taxed under [s 99A ITAA36](#).
- [PSLA 2010/4](#) describes “section three loans” which are essentially financial accommodation provided by the company to the trust.
- A trust can convert the financial accommodation to a “sub-trust” or pay out the present entitlement.



Repaying Division 7A Loans/UPEs

- **Dividends** - The payment of a dividend by the company to the shareholder to enable the shareholder to make annual payments can give rise to top-up tax.
- Paying franked dividends will reduce the franking credits available for future distributions.
- Debt reduction can generally only occur out of after taxed funds... in other words a Division 7A loan could be considered to be just a temporary strategy which will have to be unwound eventually.
- **Depreciating Assets** - Where sufficient unencumbered depreciating assets are present the trust could consider transferring/selling those items to the corporate beneficiary to partly or fully offset the sub-trust or Division 7A loan liabilities owing by the trust to the corporate beneficiary.
- **Trading Stock** - Transfer of trading stock owned by the trust to the company and enable the corporate beneficiary to be the wholesaler to the trust.
- **Business Transfer** - The trust transfers the business or active assets of the business to the corporate beneficiary... Essentially allowing the company to carry on the relevant business and make distributions of dividends out of surplus working capital.... note the small business roll-over restructuring from 1 July 2016... Subdivision 328-G ITAA97.
- **Refinancing the Loan** – The loan term could be converted from a 7 year unsecured loan to a 25 year secured loan.



Changes to Division 7A - Background

- The Board of Taxation completed its post-implementation review of Division 7A and provided its report to government on 12 November 2014.
- On 4 June 2015, the Government announced the release of the Board's report on its post-implementation review of Division 7A and the Government adopted a number of the Boards recommendations in the 2016-17 Budget.
- The proposed changes were expected to provide clearer rules for taxpayers and assist in easing their compliance burden while maintaining the overall integrity and policy intent of Division 7A.
- The changes include a self-correction mechanism for inadvertent breaches of Division 7A, appropriate safe-harbour rules to provide certainty, simplified Division 7A loan arrangements and a number of technical adjustments to improve the operation of Division 7A and provide increased certainty for taxpayers.
- The Government in the 2018/2019 Budget announced that it will legislate to ensure that UPEs come within the scope of Division 7A from 1 July 2019.
- In the 2018/2019 Budget the Government indicated that will also defer the start date of the targeted amendments to Division 7A 1 July 2018 to 1 July 2019 to enable all Division 7A amendments to be progressed as part of a consolidated package.



Changes to Division 7A – Consultation Paper

- A consultation paper was issued on 22 October 2018 with comments to be received by 21 November 2018.
- The purpose of the paper was to seek stakeholder views on the Government's proposed implementation of the amendments to Division 7A.
- The IPA in association with many other interested parties made a submission to the Government on the consultation paper and welcomed the opportunity for consultation.
- However the IPA expressed some disappointment that certain key aspects of the proposed amendments to Division 7A were not "business friendly" and imposed unnecessary constraints and costs on small business.
- The IPA submission considered each of the proposed changes in detail and critiqued their potential application with particular reference to their capacity to deliver a simpler and fairer tax regime for small businesses.
- Having reviewed each component of the proposed changes the IPA recommended that the Division 7A provisions be rewritten from the ITAA36 into the ITAA97 in a clearer and simpler manner to minimise the compliance burden whilst helping to protect the integrity of the tax system.



Changes to Division 7A – New Loan Model

- **Single 10 year term** - New loan rules will be implemented for complying Division 7A loans. The loan model will have a maximum term of 10 years with a variable interest rate and payments of both principal and interest in each income year.
- There will be no requirement for a formal written loan agreement, however written or electronic evidence showing that the loan was entered into must exist by the lodgment day of the private company's income tax return.
- The minimum yearly repayment amount consists of both principal and interest:
 - The principal component is a series of equal annual payments over the term of the loan.
 - The interest component is the interest calculated on the opening balance of the loan each year using the benchmark interest rate.
- The minimum yearly repayment amount reduces the balance of the loan each income year. Where the minimum yearly repayment has not been made in full any shortfall will give rise to a deemed dividend for the year.
- Interest is calculated for the full income year, regardless of when the repayment is made during the year (except Year 1). If the loan is paid out early, that is before Year 10, interest will not be charged for the remaining years of the loan.
- Repayments of the loan made after the end of the income year but before the lodgment day for the first income year are counted as a reduction of the amount owing even if they are made prior to the loan agreement being finalised. Interest for Year 1 is calculated for the full income year on the balance of the loan outstanding at lodgment day.



New Loan Model – Transitional Rules (1)

- Transitional rules will be introduced to allow taxpayers that have existing 7 or 25 year loans to transition to the new 10 year loan.

7 Year Loans

- All complying 7 year loans in existence as at 30 June 2019 must comply with the new proposed loan model and new benchmark interest rate to remain complying loans, but will retain their existing outstanding term.
- For instance, a loan maturing 30 June 2021 will continue to mature on this date. This means that under the transitional rules, its remaining term will be 2 years. The outstanding loan balance would be repayable over 2 years, and interest would be charged using the new benchmark interest rate under the proposed model.
- Current loan agreements with written reference to the benchmark interest rate should not be required to be renegotiated under this option.

25 year loans

- All complying 25 year loans in existence as at 30 June 2019 will be exempt from the majority of changes until 30 June 2021. However, the interest rate payable for these loans during this period must equal or exceed the new benchmark interest rate.
- On 30 June 2021, the outstanding value of the loan will give rise to a deemed dividend unless a complying loan agreement is put in place prior to the lodgment day of the 2020-21 company tax return. The first repayment will be due in the 2021-22 income year.



New Loan Model – Transitional Rules (2)

Pre-1997 Loans

- For outstanding pre-1997 loans (i.e. those loans which have not already been forgiven and continue to be reported in tax returns), the proposed transitional rule will provide an affected borrower with a two year grace period before the first repayment is due, with the loan to be repaid over the subsequent 10 years.
- Under the transitional rules, pre-1997 loans will be taken to be financial accommodation as at 30 June 2021. The taxpayer will have until the lodgment day of the 2020-21 company tax return to either pay out the amount of the loan or put in place a complying loan agreement, otherwise it will be treated as a dividend in the 2020-21 income year. The first repayment will be due in the 2021-22 income year.
- The consultation paper states that this will provide certainty for taxpayers and protect them from exposure to Division 7A if the Commissioner were to consider that there was no longer a commercial loan in existence and deemed it to be forgiven.



New Loan Model – Critique

- The 10 year loan model provides far less flexibility in relation to repayment when compared with the recommendations of the Board of Taxation. The shorter repayment period will place more cash flow pressures on small business.
- The higher benchmark interest rate under the proposed model (which is over 300 basis points higher than the current benchmark rate) will lead to higher interest costs and repayment amounts; placing a greater financial burden on business owners.
- The change to the legislation of including UPEs as loans provides clarity in relation to the operation of the law and removes the requirement to apply the guidance in Taxation Ruling TR 2010/3, but the shorter repayment period (10 years) for Division 7A loans does not accommodate the practical cash flow constraints that exist where working capital requirements of the trust are high.
- The removal of the need for a formal loan agreement may on balance not result in a reduction in compliance or administrative requirements.
- The transitional rules for 25 year loans are oppressive given that parties will have developed long-term investment strategies on the basis of being able to have such a facility.
- The approach to the pre-December 1997 loans in bringing them within the scope of Division 7A could be described as retrospective legislation.



Changes to Division 7A – Distributable Surplus

- The concept of distributable surplus is a notion of profit which determines the total amount of dividends a private company can be taken to have paid under Division 7A. The amount of a deemed dividend under Division 7A is currently limited by the distributable surplus of the private company that provided the benefit.
- The discussion paper states that capping the amount of the deemed dividend is considered contrary to the efficient operation of the Division 7A integrity rule. That is, if a certain amount is 'distributed' to the shareholder, then tax should be paid on the entire amount, and it should not be arbitrarily limited.
- The amendments will remove the concept of distributable surplus. This will ensure the integrity of Division 7A so that dividends can be deemed for the entire value of the benefit that was extracted from the private company. This will also align the treatment of dividends with s 254T Corporations Act 2001 (Cth) which allows dividends to be paid out of both profits and capital.

Critique

- The proposed removal of the distributable surplus attacks the fundamental design of Division 7A which was to prevent access to retained profits without recording assessable income in the hands of the recipient. In the absence of the concept of distributable surplus all distributions will be assessable and this will most likely give rise to double taxation and the taxation of capital amounts as income.



Changes to Division 7A - UPEs

- Where a UPE remains unpaid at the lodgment day of the private company's income tax return, the UPE will be a deemed dividend from the company to the trust (which is assessable at the marginal tax rates of the beneficiaries or the top marginal tax rate, if assessable to the trustee), or alternatively the UPE can be put on 'complying loan terms' under which principal and interest payments are required to be made.
- All UPEs arising on, or after 16 December 2009 and on, or before, 30 June 2019, that have not already been put on complying loan terms or deemed to be a dividend, will need to be put on complying terms by 30 June 2020. The first repayment for such loans would be due in the 2019-20 income year. Any amounts outstanding that have not been put on complying loan terms by the end of the 2019-20 income year will result in a deemed dividend for the outstanding amount of the UPE.
- All UPEs that arise on, or after, 1 July 2019 will need to be either paid to the private company or put on complying loan terms under the new 10 year loan model prior to the private company's lodgment day, otherwise they will be a deemed dividend.
- UPEs that have already been placed on complying loan terms will be treated in accordance with the relevant 7 or 25 year loan transitional rules.

Critique

- The proposed implementation approach is in line with the Commissioner's recent Practical Compliance Guidance.



Changes to Division 7A – Self Correction

- The introduction of a self-correction mechanism will allow taxpayers to rectify inadvertent breaches of Division 7A. This will provide the opportunity to voluntarily correct their arrangements without penalty.
- To qualify for self-correction, the taxpayer will need to meet eligibility criteria in relation to the benefit that gave rise to the breach. The eligibility criteria will require that:
 - on the basis of objective factors, the breach of Division 7A was an inadvertent breach;
 - appropriate steps have been taken as soon as practicable (and no later than six months after identifying the error unless the Commissioner allows more time) to ensure that affected parties are placed in the position they would have been in had they complied with their obligations; and
 - the taxpayer has taken, or is taking, reasonable steps to identify and address any other breaches of Division 7A.
- Reasonable circumstances would be set out by the ATO in its public advice and guidance products.
- The current Commissioner's discretion will be removed in its current form, and remain available only in circumstances where the taxpayer seeks the Commissioner's discretion to have the dividend franked.

Critique

The self-correction mechanism for taxpayers to rectify inadvertent breaches of Division 7A without penalty (rather than have the Commissioner apply his discretion) is generally positive. What if a taxpayer cannot take appropriate corrective action within a reasonable period of time?



Changes to Division 7A – Period of Review

- Under the current law, some taxpayers attempt to manipulate their Division 7A position by claiming the period in which the Commissioner may amend the relevant tax return to account for a deemed dividend for their payment, loan or debt forgiveness has expired.
- The Board recommended that if the Amortisation Model was adopted, the period of review would commence from the lodgment day for the income year in which each milestone payment was required (or would have been required, had a complying loan agreement been entered into).
- To improve integrity and ensure compliance with the new loan model, as well as the ability to self-correct, it is proposed that the period of review for Division 7A transactions be extended to cover 14 years after the end of the income year in which the loan, payment or debt forgiveness gave rise or would have given rise to a deemed dividend. This will apply from 1 July 2019.

Critique

- While other extended periods of review exist in the taxation legislation (capital gains tax, fraud or evasion) the consultation document provides no specific rationale for the 14 year period. It would be necessary for the Government to demonstrate why the increased period of review would be necessary given that it would substantially increase the compliance requirements in relation to record keeping rather than reducing compliance.



Changes to Division 7A – Safe Harbour

- The introduction of new safe harbour rules for the provision of assets for use will provide certainty and simplify compliance for taxpayers, s 109CA ITAA36.
- The taxpayer will continue to be able to use their own calculation of the arm's length value instead of the legislative formula.
- The safe harbour will apply for the exclusive use of all assets excluding motor vehicles. This is because the market value for rental of a motor vehicle is readily ascertainable by other means.
- The safe harbour will generally apply unless the taxpayer has received a non-exclusive right to use an asset.
- The proposed formula for the safe harbour is:
$$\frac{A \times IR}{\text{days in year} \times \text{days used}}$$

Where:

- A = Value of asset at 30 June for the income year in which the asset was used.
- IR = benchmark interest rate plus 5 per cent uplift interest.
- Days used = days shareholder (or their associate) used or had the exclusive right to use the asset.
- Days in year = days in income year (i.e. 365 or 366).



Division 7A – Minor Technical Amendments

- Use of assets – timing rules – first day of the income year when the entity uses the asset.
- Interaction between debt forgiveness and loans – Amendments to s 109G(3) ITAA36.
- In the ordinary course of business - s 109M ITAA36 will be amended to limit the exception to loans in the ordinary course of a business of lending money to third parties, rather than in the ordinary course of any business.
- Benefits provided through interposed entities - s 109T(1) ITAA36 will be amended to ensure the provision gives effect to the underlying policy intention to bring to account indirect benefits, even if the payment or loan that results in the indirect benefit also has other commercial purposes.
- Deemed dividends are non-deductible - s 109Z ITAA36 will be amended to make clear that a payment that is taken to be a dividend under Division 7A is not an allowable deduction.
- Division 7A and Fringe Benefits Tax - exception in subsection 109ZB(3) will be extended to ensure that Division 7A will not apply to payments to former shareholders or associates of former shareholders in their capacity as an employee if the payment was a fringe benefit.



Questions / Discussion





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Thank you