

Budget Update

Federal Budget - Proposed Division 7A Amendments

A number of the tax measures announced in the Budget have operative dates of 1 July 2009. In order to consult on these changes prior to their implementation, Treasury releases discussion papers. Treasury has recently released the Consultation Paper into the proposed amendments to the Division 7A rules.

To recap, Division 7A deems loans and payments from companies to shareholders and associates to be dividends, unless certain conditions or exemptions apply.

The focus of the Treasury Consultation Paper is on the following amendments:

1) Use of company assets by shareholders

Proposed to ensure that the term 'payment' includes the use of company assets by a shareholder or associate similar to the Fringe Benefits Tax ("FBT") provisions for employees.

Example: A private company owns a holiday home valued at \$500,000 that is rented on a short term rental basis for \$700 per week. For four weeks a year, the shareholder's family use the holiday home at no cost. This would represent a "payment" to the value of \$2,800.

One of the issues on which Treasury is currently seeking comment is whether any exemption should apply where the asset is used by the shareholder or associate for business related purposes. Currently, Division 7A does not provide a blanket exemption for business transactions between related parties.

It is not uncommon for businesses to be structured where one entity holds the assets that are used in a business carried on by a separate, but related, entity. For example, a family farm may be owned by a company, but the farming business is carried on in a trust or partnership. Rent is often not paid by the trading entity, particularly if it is in a loss.

However, unless an exemption is introduced for business related use of assets, the above example would deem a dividend to the trading entity. Furthermore, these amendments may deem a dividend if the shareholders of the company live in the farm house.

Minor and infrequent benefits as determined under the current FBT provisions will be exempt under the proposed Division 7A amendments.

It is also unclear as to whether other FBT concessions, such as exempt remote area housing, will apply to shareholders receiving the same benefits. Submissions are being sought on this issue.

2) Corporate Limited Partnerships

Ensuring that closely held Corporate Limited Partnerships fall within the definition of private companies for Division 7A purposes.

Submissions are also being sought on the most appropriate method of ensuring this occurs.

3) Other proposed technical amendments

- Ensuring Division 7A applies through interposed entities, including trusts;
- Ensuring revaluation schemes do not limit the application of Division 7A;
- Amending the definition of non-commercial loans to include amounts treated as dividends by section 109XB;
- Aligning the application of various provisions between trusts and companies;
- Removing doubt with respect to disregarding certain "repayments" on re-borrowed funds;
- Amending the definition of 'distributable surplus' to add back certain Division 7A 'payments';
- Introducing specific rules that apply to non-resident private companies with no Australian sourced income.

Actions

RSM Bird Cameron will be making submissions to Treasury in respect of the proposed amendments that are believed to be detrimental to our clients, specifically to ensure that an "otherwise deductible rule" and other concessions are incorporated in regards to item (1) above.

At this time we would not advise clients to transfer business property from one entity to another until the legislation has been released. You should contact your accountant prior to making any decisions to transfer property. If you have any queries the team at RSM Bird Cameron would be pleased to provide assistance.

Your local RSM Bird Cameron accountant can be contacted as follows:

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