TAX MATTERS

TAX STRATEGIES FOR YOU AND YOUR BUSINESS

EDITION 36 – 2020

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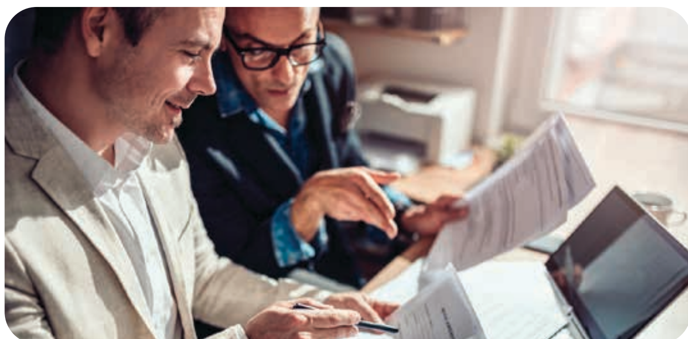

Division 7A and private loans

It is not uncommon for businesses to provide loans to shareholders or associates of a company. However, business owners should know the conditions that their loan must satisfy under Division 7A, to avoid the amount being deemed a dividend.

Written agreement

Division 7A loan agreements need to be made under a written agreement before the private company's lodgement date. As a minimum, the written agreement should:

- identify the parties,
- set out the essential terms of the loans (e.g. the amount and term of the loan, the interest rate payable under the loan), and
- be signed and dated by all parties involved.

Minimum interest rate

Loans must have an interest rate greater than or equal to the annual benchmark interest rate outlined in Division 7A. The benchmark interest rate for 2020 is 5.35% and will be 4.52% in 2021. This interest rate needs to be applied for each year after the year in which the loan was made.

Maximum term

The maximum term for a loan agreement is seven years. If the loan is secured by a registered mortgage over real property, the maximum term is 25 years. For this maximum term, the market value of the property (not including any other liabilities for securing the property prior to the loan) must also be at least 110% of the amount of the loan.

Refinancing loans

From the 2007 income year onwards, loans that can be refinanced without resulting in a deemed dividend include:

- An unsecured loan which is converted to a loan secured by a registered mortgage over real property can have the loan term extended (with relative terms).
- A secured loan which is converted to an unsecured loan with a corresponding reduction in the loan term.
- A loan which becomes subordinated to another loan from another entity due to circumstances beyond the control of the original entity.

If these loan conditions are not met, Division 7A of the Income Assessment Act 1936 applies and the loan is deemed a dividend. This dividend is treated as taxable income and the company receives no tax deductions for its loan to you or your shareholders.

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Changes to business practices and TPAR

In response to the social distancing and sanitary requirements of COVID-19, it has become common for businesses to provide additional cleaning and courier services to customers. As a result, many businesses have taken on contractors to assist with the extra work.

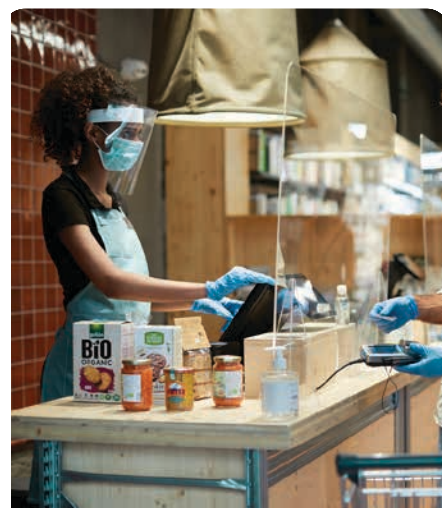
Businesses who have made payments to contractors in the last year may need to lodge a Taxable payments annual report (TPAR) by 28 August. This applies to the following contractor services:

- building and construction,
- courier, delivery or road freight,
- cleaning,
- information technology,
- security, surveillance or investigation.

Delivery and cleaning services are particularly relevant for businesses operating through the COVID-19 pandemic. For example, businesses that are limiting access to their physical stores due to social distancing restrictions may have paid contractors providing courier services to deliver goods to customers on behalf of the business. If the payments received by the business for courier or cleaning services provided by contractors amounts to 10% or more of their total GST turnover, they will be required to complete a TPAR. Businesses can still lodge a TPAR even if they don't think they need to or if they are unsure if they meet the 10% GST turnover threshold.

Businesses providing courier or cleaning services using their existing employees and not contractors will not need to lodge a TPAR.

TPAR lodgements can be made using SBR-enabled business software, the ATO Business Portal, through a tax or BAS agent, or by ordering a Taxable payments annual report (NAT74109) paper form.



CGT rollover when transferring assets in a divorce

Transferring the ownership of assets from one party to another will typically attract CGT. However, in the event that a change in ownership occurs due to the breakdown of a relationship, you may be eligible for a rollover of the asset.

A rollover allows taxpayers to defer or disregard a capital gain or loss that would normally arise on a CGT event. Specifically, a same asset rollover can occur when an individual transfers assets to their ex-spouse, as the transferee already has an involvement with the asset. The spouse who receives the asset will make the capital gain or loss when they dispose of the asset in future. They will also receive the cost base of the asset (the cost of the asset at the time of its initial purchase), as well as expenses incurred when acquiring, holding and disposing of the asset.

The rollover applies to CGT events that occur as a result of:

- An order of a court or a court order made by consent under the Family Law Act 1975 (foreign laws with similar logistics may also apply).
- A court order under a state, territory, or foreign law relating to the breakdown of a relationship.
- A binding financial agreement, or a corresponding written agreement.

Separating couples transferring assets in accordance with a binding financial agreement will not require court intervention, however, for rollover to apply, the following must be true at the time of transfer:

- the involved spouses are separated,
- there is no reasonable expectation of cohabitation resuming,
- the transfer of assets occurred for reasons directly related to the breakdown of the relationship. For example, the transfer may not be directly connected to the separation if the spouses already agreed to the transfer before the breakdown of their relationship.

Couples with informal or private agreements related to the transfer of assets will not be eligible for a rollover, and CGT will apply to these ownership transfers. The parties cannot choose whether or not the rollover applies to their situation.

Adjusting GST liability on your BAS

Business activity statements (BAS) may require adjustments from time to time if their net GST liability changes or is incorrect.

An adjustment needs to be made in the event that your GST payable or credit attributed in a previous tax period becomes incorrect. The following are the situations which may require you to make an adjustment:

- the price of a sale or purchase is changed,
- the cancellation of a taxable sale you made, or a purchase for which you can claim a GST credit,
- bad debt write-off or recovery,
- making or receiving a third-party payment, and
- the GST-exclusive value of your purchase is more than $1,000, and the actual use of your purchase (to make input-taxed sales or for private purposes) differs from your intended use.

The ATO requires you to make and issue adjustment notes to a purchaser in the case that you make a taxable sale and the price of the sale changes, the purchaser asks you for an adjustment note, or you become aware of a change and have already issued a tax invoice for the original sale. Adjustment notes must be issued no more than 28 days after such circumstances.

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