

Practice Update

December 2018

Company loans to shareholders under review

The Government has released a consultation paper outlining proposed reforms to 'simplify' the loan agreements that are generally required when a shareholder (or their associate) borrows funds (or receives a payment) from a related company.

*Editor: Broadly, where a private company makes a payment or loans funds to a shareholder and/or their associate, the amount will be treated as a taxable **unfranked dividend** paid to the recipient.*

To avoid this, many shareholders enter into complying 'Division 7A loan agreements' (basically agreeing to repay the relevant amount within 7 years, or 25 years if the loan is secured).

With this in mind, Treasury is currently looking at (amongst other things):

- simplifying the Division 7A loan rules by converting to a new 10-year model; and
- clarifying that distributions from a trust to a 'bucket' company that remain 'unpaid present entitlements' come within the scope of Division 7A.

Editor: The proposed amendments are intended to apply from 1 July 2019 and will arguably be the most significant tax reforms impacting business and investment clients over the next two years.

At this stage of the consultation process, the Government is currently considering submissions made with respect to these proposals and it is expected that draft legislation, will be available early in the 2019 calendar year.

ATO to send text messages if bank account details incorrect

The ATO has advised that it will send SMS text messages directly to taxpayers where incorrect

bank account details were included in their tax returns and they were entitled to a refund.

The SMS will advise impacted taxpayers that:

- their refund cannot be processed due to incorrect bank account details; and
- they should phone the ATO on 13 28 61 to correct their details.

If impacted taxpayers contact the ATO with their correct details within seven days, any refund due will be issued electronically.

Editor: In the wake of an increase in recent tax fraud attempts, taxpayers need to exercise additional caution when dealing with electronic messaging from (or purportedly from) the ATO.

*The authenticity of ATO correspondence can be verified by calling the ATO on **1800 008 540***

ATO contact regarding business cars and Fringe Benefits Tax ('FBT')

The ATO has recently advised that it will be contacting taxpayers (and tax agents on behalf of their clients) that have been identified as having cars registered in their business name who have **not** lodged an FBT return.

The ATO has reminded businesses that:

- a car fringe benefit will occur when a business owns or leases a car and makes it available for an employee's private travel or use (including garaging the car at or near an employee's home and making it available for private use); and that
- business directors are also 'employees' for FBT purposes.

External collection agencies to enforce ATO lodgment obligations

The ATO has finalised a trial relating to sending overdue taxpayer lodgment obligations to external collection agencies.

As a result, it may now refer taxpayers to an external collection agency to secure tax return lodgment.

The ATO has stated that it will only refer a taxpayer to an external collection agency where the taxpayer takes no action in response to its initial correspondence letters.

ATO data matching and share transactions

The ATO has extended its data matching program, this time focusing on share data.

The ATO will continue to receive share data from ASIC, including details of the price, quantity and time of individual trades dating back to 2014, with more than 500 million records obtained.

The ATO will use the information to identify taxpayers who have not properly reported the sale or transfer of shares as income or capital gains in their income tax returns.

It seems share transactions are high on the ATO's priority list, given more than 5 million Australian adults (almost one-third) now own shares.

Improvements to employee share schemes announced

The Government has announced it intends to introduce legislation to improve the ability of small businesses to offer employee share schemes by simplifying the current regulatory framework, and reducing the time and cost burden for businesses by (amongst other things):

- increasing the value limit of eligible financial products that can be offered in a 12-month period from \$5,000 per employee to \$10,000 per employee;
- creating an exemption for disclosure, licensing, advertising and on-sale obligations in the Corporations Act; and

- allowing small businesses to offer (in most instances) employee share schemes without publicly disclosing commercially sensitive financial information.
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ATO guidance regarding 'downsizer contributions'

The ability to make 'downsizer contributions' effectively commenced on 1 July 2018, prompting the ATO to release further guidance with respect to this new superannuation contribution classification.

Editor: This new measure will be most relevant for individuals approaching retirement, where they dispose of their family home in an effort to 'downsize' and they want to contribute part or all of the proceeds to superannuation.

Basically, these measures allow older Australians to make a downsizer contribution where:

- they are aged at least 65;
- there was consideration received for the disposal of an eligible Australian dwelling;
- the contract of sale for the property was entered into on or after 1 July 2018;
- a superannuation contribution is generally made within 90 days of settlement;
- the contribution does not exceed the lesser of \$300,000 and the proceeds received from the sale of the dwelling;
- an ownership interest in the dwelling had been held for at least 10 years (usually by the individual making the contribution or their spouse);
- either a full or partial CGT main residence exemption applies to the disposal of the dwelling;
- a choice to treat the contribution as a downsizer contribution is made in the approved form; and
- broadly speaking, it is the first downsizer contribution the taxpayer has made.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.