



ENEWS

12 MONTH AMNESTY ON SHAREHOLDER LOAN ACCOUNTS

On July 30, the Australian Taxation Office issued Practice Statement PS LA 2007/20. It provides the Commissioner's administrative approach to dealing with Division 7A of the Income Tax Act. It addresses what is commonly known as shareholder loan account problems although its reach is wider than this. Legislation introduced in 1997 caught certain loans, payments or debt forgiveness where a related shareholder may have received a benefit through a company or trust which was not taxed. Division 7A provided the mechanism to catch these transactions and tax them.

Typically, these debit loan accounts are created where shareholders draw funds from their company accounts in excess of their salary or dividend entitlements. This is most likely to occur if you are in the habit of paying private expenses or drawing lump sums out of your company account.

If your loan does not comply with the current guidelines, then the loan might be deemed an unfranked dividend with the loan amount assessable in the hands of the shareholder. In addition, the company will lose the franking credits that would otherwise attach to the deemed dividend. This can become a very expensive exercise.

Debit loan accounts can be easily overlooked and also created unintentionally.

Many small businesses were caught out by Division 7A. The breach having occurred could be remedied but not removed. The effect was a tax liability had been triggered, although in many cases taxpayers were unaware of this.

PS LA 2007/20 provides an 'amnesty period' up to 30 June 2008 where taxpayers can put in place corrective action that will avoid the tax liability that otherwise would have occurred and also the resultant penalties.

There are certain conditions that need to be met to qualify for this relief. The first requires that it is clear that the failure to comply was the result of an honest mistake or inadvertent omission (although it is unclear at this stage how the Commissioner will assess what is an honest mistake).

In the vast majority of cases small business owners have not set out to knowingly breach Division 7A. In most cases they would not even know what Division 7A is.

A further condition is that where corrective action requires you to establish a complying

loan agreement, and in most cases it will, then you need to have met the minimum payments that would have been required if the loan had been put in place in the year when the debt was incurred. This is a cash flow or financing issue. It may require some planning. So, it is best not to leave this until near the end of the amnesty period. If you are affected, you need to be planning your approach as soon as possible.

If you have debit loans to shareholders or Directors (or associates), then talk to us today about safeguarding your position and ensuring you don't get caught by this tax.