

Changes to Division 7A Rules

The minister for Revenue and Assistant Treasurer has announced amendments to the integrity rules concerning distributions by private companies to its shareholders or associates.

The Division 7A integrity rules exist to prevent private companies from making tax-free profit distributions to shareholders (or their associates). Advances, loans and other credits to shareholders are deemed to be assessable dividends, unless these distributions come within specified exclusions.

Currently, shareholders are taxed on the deemed dividends without the ability to access franking credits to offset the tax paid by the company, however the company's franking account is still debited. These amendments remove the automatic debiting of the company's franking account when a deemed dividend arises, thereby removing this double-penalty. The amendments are expected to be introduced into Parliament in early 2007, with effect from 1 July 2006.

Other technical amendments include a Commissioner's discretion to not apply Division 7A when certain unintentional breaches occur and no tax mischief was involved. This discretion will apply from 1 July 2002.

A change will also be made to how Division 7A interacts with the FBT rules effective from 1 April 2007. These changes will reduce the extent to which taxpayers can be inadvertently caught by Division 7A.

New Small Business Framework

The Treasurer and Minister for Small Business have announced that the Government will introduce legislation to standardise the eligibility criteria for small business concessions from 1 July 2007.

Separate eligibility tests currently exist for GST, the Simplified Tax System, Capital Gains Tax, Fringe Benefit Tax and PAYG small business concessions. For example, to enter the Simplified Taxation System, which among other things allows access to immediate or increased write-off rates for plant and equipment, taxpayers are required to have an annual turnover of less than \$1M. Conversely, to access the small business CGT concessions,

THIS ISSUE

*Changes to
Division 7A Rules*

*New Small
Business
Framework*

*Management Fee
Disallowed*

*Improved
Philanthropy
Concessions*

*Christmas Parties
and Fringe
Benefits Tax*



taxpayers need to have a net asset value of less than \$5M. Similarly, FBT, GST and PAYG small business tax concessions each have their own separate eligibility criteria.

Under the new proposals businesses with an annual turnover of less than \$2M can choose to access any of these concessions. Businesses can also choose to access the concessions if they meet any of the existing eligibility criteria.

Draft legislation is expected to be available for public comment in early 2007.

Management Fee Disallowed

The AAT has disallowed deductions for management fees and interest payments made to a related company in respect of alleged services carried out by an employee/director of that company. The AAT found that there was little evidence provided of the actual services that were undertaken and there was evidence to suggest that the company did not trade during the period.

In respect of the interest payments there was evidence to suggest that the payments were actually made by the employee/director and there was a discrepancy between the amount claimed and the amount shown in the company's accounts for the relevant period. Accordingly, the Tribunal held that the amounts were not referable to the applicable tax years.

This case highlights the need to document the terms of related party arrangements and ensure that such arrangements are bona fide in nature.

Improved Philanthropy Concessions

The Federal Government has announced improved tax deductibility provisions with respect to fundraising charity dinners and events aimed at encouraging greater philanthropy in the community.

The 'minor benefits measure' permits a tax deduction for a payment to a charity where a benefit is received by the taxpayer, provided that the value of the benefit received does not exceed the designated percentage of that payment.

The minimum contribution threshold (previously \$250) will be reduced to \$150, allowing a greater number of charities to use the measure for fundraising.

The value of the minor benefit allowed will be increased to 20% of the gift or ticket price, but shall not exceed a total value of \$150 (previously 10%, but not exceeding \$100).

These changes will apply from 1 January 2007.

Christmas Parties and Fringe Benefits Tax

During the festive season it is important to consider the Fringe Benefits Tax ("FBT") implications associated with work Christmas parties. There is no separate FBT category for



such functions and they may be subject to differing tax treatment depending on the circumstances.

For example, a light meal and drinks (not including alcohol) provided at a Christmas party may be exempt from FBT if it is provided during a working day on business premises and is only consumed by current employees.

However, Christmas parties may constitute 'entertainment benefits' and be subject to FBT unless they are specifically exempt or fall within the minor benefits exemption. A Christmas party may be a minor benefit and exempt if the cost is less than \$100 per employee (including GST) and certain conditions are met. The cost per employee includes costs for any of their associates (i.e. spouse) in attendance.

The cost of providing a Christmas party is income tax deductible only to the extent that it is subject to FBT. Thus, any expenses that are FBT exempt cannot be claimed as deductions. Any costs incurred in entertaining clients at such functions are not subject to FBT but are also not income tax deductible.

Furthermore, no GST credits can be claimed where the entertainment is not subject to FBT and no credits can be claimed on the client portion.

KD Johns Christmas Message

KD Johns & Co wishes all of our readers a safe and enjoyable Christmas and a happy new year.

Please note our office will close on Friday 22 December 2006 through to Monday 8 January 2007.



Enquiries

If you would like further information regarding any of the tax topics discussed in this newsletter, please contact:

KD Johns & Co
15 Ord Street
WEST PERTH WA 6005
Ph: (08) 9483 1800
Fax: (08) 9483 1888
Email: enquiries@kdjohns.com.au

Disclaimer

Material contained in this publication is intended for information purposes only and not for advice. Readers should not act or rely upon any matter or information contained in, or implied by this publication without taking appropriate professional advice, relating specifically to their particular circumstances.