



**SOUTHERN
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Business News

December 2018



Christmas hours

Our office will be closing for the Christmas and New Year period. Our last day will be Friday the 21st of December 2018 and we will reopen on Monday the 7th of January 2019 at 9am.

We take this opportunity to wish you a

Merry Christmas

and a

Safe and Happy New Year!

Borrowing from your business? Find out how you might be triggering the Division 7A rules

What is Division 7A?

Division 7A is essentially designed to prevent shareholders and their associates from using private company profits without paying tax at their marginal tax rates.

With the highest individual marginal rate sitting at 45%, opportunistic tax planners might attempt to structure their tax affairs to

access the lower company tax rate of either 30% or 27.5%. However, the anti-avoidance provisions of Division 7A operate to prevent this kind of activity.

Division 7A rules determine what kinds of benefits to shareholders and their associates are treated like unfranked dividends and therefore subject to personal income tax without any credit for company tax paid.

Does Division 7A apply to me?

You may potentially be affected by Division 7A if you are a:

- private company
- non-resident private company
- closely-held corporate limited partnership
- trust
- interposed entity
- shareholder or associates of a shareholder.

Note! The term 'associate' in this case extends to a shareholder's spouse, child, relative or trustee of a trust under which the shareholder benefits.

What transactions does Division 7A apply to?

Division 7A can apply to a broad range of transactions, including:

- loans
- payments
- debt forgiveness
- payments or loans where a trust has an unpaid present entitlement (UPE)
- payments and loans through interposed entities
- private use of company assets
- transfer of company assets
- gifts
- guarantees.

Note! An unpaid present entitlement (UPE) is a payment or distribution that you are entitled to but have not been paid.

When does Division 7A not apply?

Division 7A does *not* apply to:

- payments to a shareholder or associate in his or her capacity as an employee. In such situations, fringe benefits tax (FBT) may apply rather than Division 7A.
- amounts that are assessable to the shareholder or their associate under other parts of the income tax law, such as normal dividends or director's fees.
- a payment or benefit that is potentially subject to Division 7A if it is repaid or converted into a Division 7A complying loan by the company's lodgement day for the income year in which the payment or benefit occurs.

What is a complying loan?

A loan is a complying loan if the loan has satisfied the minimum interest charge and maximum term requirement and is made or put under a written agreement before the private company's lodgement day (currently 7 or 25 years depending on the terms).

Note!

- Complying loans will have tax implications for the company and shareholder (eg the taxation of interest will need to be considered).

Division 7A is always on the ATO's radar. Speak to your tax adviser if you have been involved in transactions that you think may trigger Division 7A. ■



Do you hold vacant land? Your expenses may no longer be deductible

Are you a property owner holding vacant land? The Government has recently released draft legislation to deny deductions for certain expenses associated with holding vacant land.

The current law

The current law allows you to claim the costs of holding vacant land if it is held for the purpose of gaining or producing assessable income or carrying on a business for the purpose of gaining such income.

The proposed law

From 1 July 2019, the proposed law will limit deductions for expenses associated with holding vacant land.

The proposed rules do not apply to expenses associated with holding vacant land that is used by the owner or a related entity to carry on a business. For example, the measure will not apply to a business of primary production or to a property developer that is carrying on a business and is holding land for the purpose of that business.

The proposed rules also do not apply to corporate tax entities, managed investment trusts, public unit trusts and unit trusts.

Why the changes?

This proposed measure was announced in the 2018-19 Federal Budget, and addresses concerns that deductions are being improperly claimed for holding vacant land where the land is not genuinely held for the purpose of earning assessable income.

What is vacant land?

Land is vacant if there is no building or other structure on the land that is substantial and permanent in nature and in use or ready for use.

In this context, land does not have to refer to the whole of the land on a property title but could refer to part of the land on a property title. For example, if a property title includes two areas of land, one containing a factory and the other undeveloped, the part of the property title containing the factory has ceased to be vacant land, while the undeveloped area remains vacant land.

What does 'substantive' in nature mean?

To be substantive, a building or structure needs to be:

- substantial in size; and
- have an independent purpose or function (not ancillary in nature to other structures or proposed structures on the land such as is the case for retaining walls or fences).

Case study

Deborah owns a block of land. She intends to eventually build a rental property on the land. However, while the block of land is fenced and has a large retaining wall, it currently does not contain any substantial or permanent building or other structure.

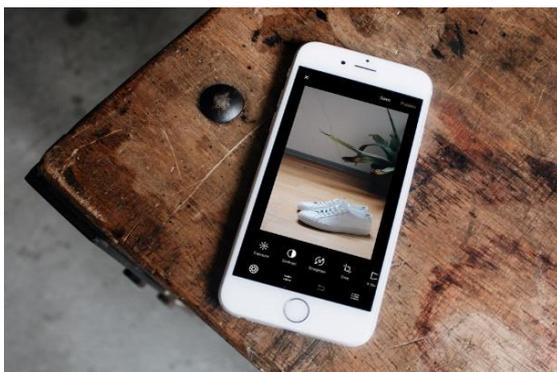
As the property does not have a substantial permanent building or structure on it, it is vacant land and Deborah cannot deduct any holding costs she may incur in relation to the land.

What if land does not have a substantive permanent building or structure?

There are many genuine commercial reasons land may not have a substantive permanent building or structure (eg holding yards for goods that are awaiting transport or customs clearance, parking areas for trucks/buses for a logistics company) as not all business operations require structures and buildings.

If the owner of land used for these purposes is a private trust or individual who does not have the requisite connection to the business being carried on (especially where there is a genuine commercial lease to an unrelated third party), all deductions will be denied even though the “vacant land” is an essential part of the business activities.

Tip! Speak to your tax adviser to find out more about how these proposed changes may affect you or your business. ■



Do you import goods and services?

GST applies to most imports over \$1,000. GST is 10% of the value of the goods you have imported. You generally need to pay

this to the Department of Home Affairs before you can receive the goods.

There is a scheme where you can pay your GST later. This is called the deferred GST scheme (DGST), and there are eligibility requirements.

If you are registered for the deferred GST scheme, you don't need to pay GST until after the goods are imported and you lodge your next activity statement.

If you're registered for GST, you may be able to claim a credit for any GST paid on goods you import for your business.



Is your business car available for private use?

A car fringe benefit occurs when your business owns or leases a car and makes it available for your employees' private travel. In this case, directors might also be employees.

Note! Generally, travel to and from work is private use of a vehicle.

For fringe benefits tax (FBT) purposes, a car is any of the following:

- a sedan or station wagon
- any other goods-carrying vehicle with a carrying capacity of less than one tonne – eg a panel van or utility (including four-wheel drive vehicles)

- any other passenger-carrying vehicle designed to carry fewer than nine passengers.

If the vehicle provided does not meet the definition of a car, and your employee has private use of the vehicle, the right to use the vehicle may be a residual fringe benefit.



Did you incorrectly claim deductions for travel to your residential rental property?

This tax time, the ATO has identified 26,000 taxpayers who have incorrectly claimed deductions for travel to their residential rental properties, despite recent changes to tax laws.

From 1 July 2017, you are no longer able to claim travel expenses relating to inspecting, maintaining or collecting rent for a residential rental property as deductions unless you are carrying on a business of letting rental properties or are an excluded entity.

As with prior years, the travel expenditure cannot be included in the cost base for calculating your capital gain or capital loss when you sell the property.

Note! The new changes only apply to residential rental property. You may still be able to claim deductions in relation to your commercial property.

'In the business of letting rental properties'

Generally, owning one or several rental properties will not be considered being in the business of letting rental properties.

The receipt of income by an individual from the letting of property to a tenant, or multiple tenants, will not typically amount to the carrying on of a business of letting rental properties.

This means that as their activities are generally considered a form of investment rather than a business, deductions for travel expenses are not allowed.

Excluded entities

An excluded entity is a:

- corporate tax entity
- superannuation plan that is not a self-managed superannuation fund (SMSF)
- public unit trust
- managed investment trust
- unit trust or a partnership, all of the members of which are entities of a type listed above.

Case study

Tara's Tyres Pty Ltd incurred travel expenses in 2017-18 when the property manager was tasked with inspecting a residential property investment that is currently tenanted. Tara's Tyres Pty Ltd is a corporate tax entity (a company) and can claim a deduction for rental travel expenses.

ATO and data analytics

The ATO has announced that it will be using sophisticated data analytics to assess a range of other deductions and work-related expenses.

Remember that when making a claim, you must follow the 4 golden rules:

1. You must have spent the money;

2. The expenditure must not have been reimbursed to you either directly or indirectly;
3. The expense must be directly related to earning your income; and
4. You must have some sort of record to prove that the expense was incurred (which can be produced if asked).

Made a mistake?

Rental property investors: you should check if you fall into one of these exceptions before you lodge and claim for rental travel.

If you have already lodged and made a mistake, you can lodge an amendment. Speak to your tax adviser for more information. ■



New tax reporting requirements for couriers and cleaners

If you own a business that provides cleaning or courier services (even if it's only part of the services provided), you now need to lodge a taxable payments annual report (TPAR) each year to tell the ATO about your payments to contractors.

What is a TPAR?

The TPAR tells the ATO about payments that are made to contractors for providing services.

Contractors can include subcontractors, consultants and independent contractors. The details you need to report about each contractor are generally found on the invoice you should have received from them. This includes:

- their Australian business number (ABN), where known
- their name and address
- gross amount you paid to them for the financial year (including any GST).

The ATO will use this information to make sure the contractors you pay are reporting all their income and meeting their tax obligations.

TPAR now extended to couriers and cleaners

New laws were recently passed in Parliament to extend the taxable payments reporting system to include businesses providing:

- cleaning services – to report payments to contractors for cleaning services
- courier services – to report payments to contractors for courier services.

What are courier services?

Courier services include:

- activities where items or goods are collected from, and/or delivered to, any place in Australia using a variety of methods including by car, truck, station wagon, van, ute, motorcycle, motorised scooter, drones, bicycle or other non-powered means of transport, or on foot;
- door-to-door services that are often used for specialty deliveries or for small parcels or packages. Goods commonly transported using courier services include parcels, packages, letters and food.

Note! If you sell goods and you provide the option of a delivery service, you are supplying a courier service unless the

customer doesn't have the option to obtain the goods from you any other way.

Courier services don't include:

- delivery of goods your business provides where delivery is the only method your clients or customers have of receiving the goods
- passenger transport services – for example, buses and taxis
- freight transport – the transportation of bulk or large quantities of items, goods or commodities via rail, sea, air, or road (usually heavy vehicle trucks or larger vehicles) from one location to another.

What are cleaning services?

Cleaning services include (but are not limited to) any of the following activities undertaken on a building, residence, structure, place, surface, transport/vehicle, industrial machinery or equipment and for events:

- interior cleaning
- exterior cleaning (except sandblasting)
- carpet cleaning
- chimney cleaning
- gutter cleaning
- road sweeping and street cleaning
- swimming pool cleaning
- park and park facilities cleaning.

Note! If your business provides mixed services, not just courier or cleaning services, you may need to lodge a TPAR if the payments you receive for either courier or cleaning services make up 10% or more of your total GST turnover.

When do you need to lodge a TPAR?

If your business needs to lodge a TPAR, you will need to lodge it by 28 August 2019 for payments made to contractors between 1 July 2018 and 30 June 2019. ■



Key tax dates

Date	Obligation
21 Jan 2019	Dec monthly BAS due
28 Jan 2019	Dec quarter SG due
4 Feb 2019	Feb fuel tax credit rates change
21 Feb 2019	Jan monthly BAS due
28 Feb 2019	<ul style="list-style-type: none"> - Dec quarterly BAS due - Dec quarter SGC statement due - Dec quarter PAYG instalment due

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