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Your Reference: Division 7A Loan Deed
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Thursday, 18 February 2021

Managing Director
Equity Financing Pty Ltd
13 George Avenue
Sydney NSW 2000
Australia

Dear Directors,

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*us, we can help you complete the
questions.*

Adj Professor, Dr Brett Davies – Partner

Division 7A Loan Deed

Thank you for instructing us to prepare your attached **Division 7A Loan Deed**.

How to print your document

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document
(However, do not staple the covering letter to the document.)

How do I use the Division 7A loan deed?

Read the Loan Deed thoroughly. Once you are satisfied, print and sign the Loan Deed.
Make copies and keep it in a safe place.

What is a Division 7A Loan Deed?

A Division 7A Loan Deed protects all loans and financial support that your company provides to you as a shareholder or as an associate.

By using this Deed, the loans are not classified as dividends and don't fall foul of Division 7A of the *Income Tax Assessment Act 1936* (Cth).

A requirement of a Div 7A Loan Deed is that the borrower repays 1/7th of the loan each year, as well as an interest rate set by the ATO (or a higher rate if you wish).

What is the mischief according to the ATO?

Companies pay a low flat rate of tax. In contrast, mum and dad pay a high marginal tax rate. Therefore, in the bad old days (before Div7A) mum and dad would have the company earn the income and only pay the low constant tax rate. (If mum and dad had of earned the income then they would have had to pay a higher rate of tax.)

Mum and dad then get the company to lend them the money. Mum and dad would, for example, buy a boat or have a holiday.

Mum and dad never bother to pay back the debt. Therefore, mum and dad never bother to pay the difference between the low company tax rate and the higher tax rate that mum and dad would have to have paid, if they had earned the money.

The government got sick and tired of this and introduced Div 7A. Now mum and dad need a proper commercial loan deed. Plus mum and dad have to pay back the money that the company lent them.

What is the purpose of Div 7A?

Division 7A 'ensures that private companies will no longer be able to make tax-free distributions of profits to shareholders (and their associates) in the form of payment or loans': Explanatory Memorandum to Act No 47 of 1998. Further:

'It ensures that all advances, loans and other credits (unless they come within specified exclusions) by private companies to shareholders (and their associates), are treated as assessable dividends to the extent that there are realised or unrealised profits in the company. In addition, debts owed by shareholders (or associates) which are forgiven by private companies are treated as dividends.'

What is the benchmark interest rate?

The government requires that you pay a minimum interest rate on the money your company lends to you and your family. That rate is published by the ATO each year. It is called the 'benchmark interest rate'. It changes every year.

Your Legal Consolidated Div 7A merely adopts the benchmark interest rate automatically. Your interest rate is always up to date.

The benchmark interest rate adopts the Indicator Lending Rates – Standard Bank Variable Housing Loans Interest Rate published by the Reserve Bank of Australia. The ATO gives you the interest rate before the start of the new financial year.

The Deed is a revolving line of credit so you don't need to create a new Deed each financial year.

How does it work?

You 'own' your company. You take out from the company the money you want. You see a wonderful piece of jewellery for your wife. You pull out the company credit card and buy her that gift. This is a personal item. It is not part of the business. You have gained a financial advantage from your company.

In reality you are not your company. It is a separate legal entity with its own tax obligations. Without a Div 7A Loan Deed you may have a 'deemed dividend'. The tax penalties of you 'loaning' the money from your company can be horrendous.

Division 7A *Income Tax Assessment Act 1936* deems the financial advantage to be a penalty 'dividend' from your company. Instead you should have 'borrowed' the money from your Company. Having the Div 7A Loan Deed in place allows you to treat the money you took from the company as a more tax effective 'loan'.

Your Div 7A Loan Deed protects you, as a shareholder or an 'associate' of a shareholder, when:

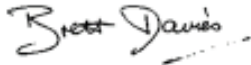
- a) you get money from your company;

- b) you get a financial benefit from your company;
- c) you get a loan from your company;
- d) your company forgives a debt you owe;
- e) your company does any of the above through an 'interposed entity'; or
- f) your Trust does any of the above where your company has 'unpaid present entitlements' from that Trust.

Conclusion

This now concludes your matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD
National Taxation Partner
LEGAL Consolidated BARRISTERS & SOLICITORS

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*Dr Brett Davies - Partner
Legal Consolidated Barristers & Solicitors*

Minutes to Accept the Division 7A Loan Deed

Held at

Present:

Equity Financing Pty Ltd ACN 157 899 456
13 George Avenue, Sydney NSW 2000, Australia

(Lender)

Quorum: It was noted that a quorum was present at the meeting.

Notice of Meeting: It was confirmed that the parties received notice of this meeting and that there is unanimous consent to the meeting being held and they waive the requirement for any specified period of the notice of the meeting. It was resolved unanimously that the meeting is validly constituted regardless of any failure to give notice as required under the *Corporations Act*.

The Division 7A Loan Agreement was tabled.

It was resolved that:

- A. Equity Financing Pty Ltd ACN 157 899 456 as Lender and Emily Chang as Borrower record in writing the terms and conditions on which any Loan is made either before or after the date of this Deed without providing security.
- B. It is intended that the terms of each Loan be such that no Loan is treated under any Income Tax Law either wholly or in part as a dividend.
- C. This Deed is in place to avoid the unfavourable tax consequences of Division 7A *Income Tax Assessment Act 1936*.
- D. The Deed is not dutiable for stamp duty and does not need to be lodged with any authority.
- E. The Deed was tabled and is adopted to govern the above and has been duly executed.
- F. Copies of the Deed and all annexures were provided to.
 - 1.1.1 Emily Chang
 - 1.1.2 Equity Financing Pty Ltd, ACN 157 899 456

There being no further business the meeting was declared closed.

Signed as a true and correct record of the meeting immediately after the meeting.

..... Date:20.....

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On our law firm's website, you:

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Adj Professor, Dr Brett Davies – Partner



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Unsecured Loan Facility Division 7A Loan Deed

To comply with Division 7A *Income Tax Assessment Act 1936*

Equity Financing Pty Ltd
ACN 157 899 456
(Lender)

and

Emily Chang
(Borrower)

This Deed is between:

Equity Financing Pty Ltd ACN 157 899 456
13 George Avenue, Sydney NSW 2000, Australia
(Lender)

and

Emily Chang
4 Walker Road, Lavender Bay NSW 2060, Australia
(Borrower)

Division 7A Loan Deed protects all loans and financial support that your company provides to you as a shareholder or as an associate.

Background

- A. Equity Financing Pty Ltd as lender and Emily Chang as Borrower wish to record in writing the terms and conditions on which any Loan is made by Equity Financing Pty Ltd to Emily Chang either before or after the date of this Deed without providing security. Equity Financing Pty Ltd and Emily Chang intend that the terms of each Loan be such that no Loan is treated under the Income Tax Law either wholly or in part as a dividend paid by Equity Financing Pty Ltd to Emily Chang in the Income Year in which the loan is made or in any subsequent Income Year in which the loan or any part of it remains unpaid including under Division 7A *Income Tax Assessment Act 1936*.
- B. The Deed allows Equity Financing Pty Ltd to make loans to shareholders or associates of shareholders of Equity Financing Pty Ltd without those loans being deemed dividends.
- C. This Deed is in place to avoid the unfavourable tax consequences of Division 7A *Income Tax Assessment Act 1936*.
- D. The Deed is not dutiable for stamp duty or duty and does not need to be lodged with any authority.

The parties agree:

1. Dictionary

1.1 Unless there is a contrary intention, in this Deed, including the Background:

Amalgamated Loan for an Income Year means the amount of the Loan or the total of the amounts of the Loans made by Equity Financing Pty Ltd to Emily Chang during that Income Year to the extent the Loan or Loans have not been repaid by the end of that Income Year

Applicable Interest Rate for an Income Year means the benchmark interest rate for that Income Year as defined by the Income Tax Law including the *Income Tax Assessment Act 1936* or as worked out under the regulations to that Act

Borrower Emily Chang and any trust associated with Emily Chang

Constituent Loan the amount of any Loan made during an Income Year that forms part of the Amalgamated Loan for that Income Year

Income Tax Law the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Taxation Administration Act 1953* and related legislation and includes any regulations made under those Acts from time to time

Income Year a financial year starting 1 July and ending on the next 30 June unless Equity Financing Pty Ltd is not in existence for the whole of a financial year and in that event the Income Year is the period of the financial year for which Equity Financing Pty Ltd was in existence

Loan (subject to clause 8) any amount lent by Equity Financing Pty Ltd to Emily Chang including:

By using Division 7A Loan Deed, the loans are not classified as dividends and penalty interest rates under Division 7A of the Income Tax Assessment Act 1936(Cth).

- I. a payment deemed to be a dividend under Division 7A except that Emily Chang has taken such corrective action including any corrective action pursuant to an ATO statement
 - II. any advance of money
 - III. the provision of credit or any other form of financial accommodation
 - IV. any loan of money of any nature
 - V. any amount on behalf of or at the request of Equity Financing Pty Ltd with Equity Financing Pty Ltd is subject to an obligation to repay the amount
- 1.2 A reference to a party to this Deed includes that party's executors, administrators, successors and permitted assigns.
- 1.3 The singular includes the plural and vice versa.
- 1.4 Any gender includes the other genders and non-genders.
- 1.5 References to clauses are to clauses of this Deed.
- 1.6 A reference to an Act of Parliament is a reference to that Act as amended, re-enacted or rewritten from time to time and includes any Act which replaces that in whole or part and references to any provision of an Act is a reference to that provision as amended, re-enacted or rewritten from time to time whether in that or a replacement Act.
- 1.7 Headings are inserted for convenience and do not affect interpretation.
- 1.8 In the interpretation of this Deed regard is given to the intention expressed in the Background and an interpretation adopted gives effect to that intention.
- 1.9 In so far as the interpretation of this Deed depends on the construction of any provision of the Income Tax Law regard is had to any binding ruling issued by the Federal Commissioner of Taxation under the Income Tax Law as to the interpretation of that provision.

A requirement of a Division 7A Loan Deed is that the borrower repays 1/7th of a loan each year as well as the interest rate set by the ATO, called 'benchmark interest rate' (or a higher rate if you wish).

2. Term of Loan

The term of a Loan is seven years from and including the date the Loan is made or such shorter period as mutually agreed between Equity Financing Pty Ltd and Emily Chang.

3. Interest

- 3.1 No interest on a Loan is payable by Emily Chang for any period of the Income Year in which the Loan is made.
- 3.2 Interest is payable by Emily Chang to Equity Financing Pty Ltd on an Amalgamated Loan for an Income Year from the start of the Income Year next following the Income Year to which the Amalgamated Loan relates.
- 3.3 The rate of interest payable on an Amalgamated Loan for an Income Year is the Applicable Interest Rate for that Income Year.
- 3.4 Interest payable for an Amalgamated Loan is calculated on the daily balance of the Amalgamated Loan.
- 3.5 Interest payable for an Income Year on an Amalgamated Loan is payable by Emily Chang on or before the last day of the Income Year.

Benchmark interest rate changes every year. Legal Consolidated's Division 7A Loan Deed merely adopts the benchmark interest rate automatically. Your interest rate is always up to date.

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<https://www.legalconsolidated.com.au/intro-div-7a-loan-deed/>

4. Principal Repayment

If there is an Amalgamated Loan for an Income Year Emily Chang pays to Equity Financing Pty Ltd on or before the last day of each subsequent Income Year in repayment of the Amalgamated Loan at least an amount which when added to the interest payable under clause 3 is equal to the minimum yearly repayment for the particular Income Year required by section 109E(5) *Income Tax Assessment Act 1936* or by any regulations made under that Act.

5. Set Off

- 5.1 If Emily Chang becomes entitled to the payment of any dividend by Equity Financing Pty Ltd then, unless Equity Financing Pty Ltd and Emily Chang otherwise agree in writing, the dividend is set off against the amount of any Amalgamated Loan or Amalgamated Loans and any accrued interest outstanding at the date of payment of the dividend.
- 5.2 If there is more than one Amalgamated Loan against which a dividend is to be set off under clause 5.1 then the set off is on a pro rata basis against each Amalgamated Loan having regard to the amount of principal and accrued interest outstanding on each Amalgamated Loan unless Equity Financing Pty Ltd otherwise determines.

You need a separate Division 7A Loan Deed for each borrower or a potential borrower.

6. Applying the Repayments

Any repayment (whether by way of set off or otherwise) of an amount owing on an Amalgamated Loan which comprises more than one Constituent Loan is (subject to clause 2) applied against the Constituent Loans in the order in which they were made unless the parties otherwise agree.

7. Further Conditions

- 7.1 In the event that the Income Tax Law imposes further conditions or requirements that must be met if a Loan or Amalgamated Loan (or any part thereof) is not deemed to be a dividend, then those further conditions or restrictions are deemed incorporated into this Deed. This is with effect from the date that the further conditions or restrictions apply to the intent that the further provisions or restrictions are treated as incorporated in such a manner as results in no such dividend being deemed to be paid.
- 7.2 The Deed is to be interpreted and where necessary read down so at all times it complies with the Income Tax Law and Division 7a *Income Tax Assessment Act 1936*.

8. Deed's Scope

This Deed applies to every loan made by Equity Financing Pty Ltd to Emily Chang other than a Loan for which Emily Chang provides security or any other Loan that Equity Financing Pty Ltd and Emily Chang agree in writing is subject to terms that differ from the terms in this Deed.

Both you and your spouse and all your children each need their own separate Division 7A Loan Deed.

9. All money owing becomes due immediately

Equity Financing Pty Ltd may decide to treat any Loan including accrued interest as automatically payable immediately if:

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- 9.1 Emily Chang disposes of its assets other than as approved by Equity Financing Pty Ltd
- 9.2 a security interest is enforced against Emily Chang
- 9.3 Emily Chang commits an act of bankruptcy or becomes insolvent
- 9.4 Emily Chang fails to pay an amount under this Deed
- 9.5 Emily Chang assigns any of their property for the creditors' benefit
- 9.6 Emily Chang interest in this Deed is attached under legal process
- 9.7 a mortgagee takes possession of any of Emily Chang assets

The borrower may be:

1. Trustee of a family trust
2. Trustee of a unit trust
3. Trustee of a bare trust

10. No Partnership

The Deed does not create the relationship of partners, or of principal and agent, between the Trustee and the Beneficiaries nor as between each other.

11. Severing to reduce tax and stamp duty

- 11.1 The Deed is interpreted to reduce taxes, imposts, duties and stamp duty (including State and federal) (Taxes) and avoid any illegality. If any clause nonetheless fails to reduce Taxes or is illegal, it is severed, read down or fettered, as required, from the Deed to the extent of the illegality or in the furtherance of the reduction of the Taxes.
- 11.2 The Deed is read down so that no mandatory taxation law or Taxes, from time to time, is contravened that would lead to an unfavourable taxation position.

12. Decision making in more than one place and Notices

- 12.1 The Deed may be executed in different locations by signing identical documents and all counterparts together constitute the Deed.
- 12.2 Meetings and decision making can be conducted in more than one place via telephone, the Internet or other means.
- 12.3 Notices may be provided via the post or email.

13. Governing Law

This Deed is governed by and construed under the law of the jurisdiction of which Equity Financing Pty Ltd is situated as evidenced by the address stated in this Deed.

Executed as a Deed on day of year ..20.....

EXECUTED for and on behalf of
Equity Financing Pty Ltd
ACN 157 899 456
by authority of its Directors in
accordance with section 127 of the
Corporations Act 2001 (Cth)

Signature of Director or Secretary

Signature of Director (if a 2nd)

SIGNED, SEALED AND DELIVERED by
Emily Chang

Emily Chang

(Signature of witness)

(Name of witness)

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