Monthly Information Newsletter – Tax & Super

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Fears of Div 7A danger from COVID-relaxed loan repayments unfounded

The ATO has clarified its position regarding loans, and the repayments of loans that may have been put on hold for the period that COVID-19 has a grip on the economy and our lives.

An important sidebar to the ATO's announcement is the implications regarding Division 7A — just in case you have had some stress about possible Div 7A outcomes because a creditor has not insisted on payment.

In normal circumstances, if a private company forgives a debt, it is considered a deemed dividend under Division 7A — "a debt is forgiven if a reasonable person would conclude a creditor will not insist on payment or rely on the borrower's obligation to pay".

But the ATO states that "allowing more time to replay a debt due top COVID-19 will not result in the debt being treated as forgiven".

Further, it says: "If a creditor only postpones an amount payable and the debtor acknowledges the debt, a debt is not considered forgiven. This is unless there is evidence that the creditor will no longer rely on the obligation for repayment."

Note also that just before the new financial year, the ATO issued an announcement entitled *Request to extend time to make minimum yearly repayments for COVID-19 affected borrowers*. It said, in part: "As a result of the COVID-19 situation, we understand that some borrowers are facing circumstances beyond their control. To offer more support, we'll allow an extension of the repayment period for those borrowers who are unable to make their MYR" (minimum yearly repayment).

Relating as it does to a possible inability of borrowers under Division 7A loan agreements to make the minimum yearly repayment required due to the COVID-19 economic situation, the announcement provided a procedure whereby a borrower who is unable to make repayments on a Division 7A loan can request an extension of time to make the minimum yearly repayment.

The benchmark interest rate for Div 7A purposes, by the way, is 4.52% for the income year ending 30 June 2021, the ATO has announced, and is relevant to private company loans made or deemed to have been made after 3 December 1997 and before 1 July 2020 and to trustee loans made after 11 December 2002 and before 1 July 2020.