

USE OF PRIVATE COMPANY ASSETS

In the 2009/10 Federal Budget, the Government announced its intention to tighten the rules relating to the taxation of benefits provided by a private company to its shareholders or their associates through the use of “lifestyle” assets (ie cars, boats, holiday houses, hobby farms).

Exposure draft legislation has now been introduced to implement the proposed changes to Division 7A. The professional bodies are currently preparing submissions in relation to the exposure draft legislation.

Draft legislation

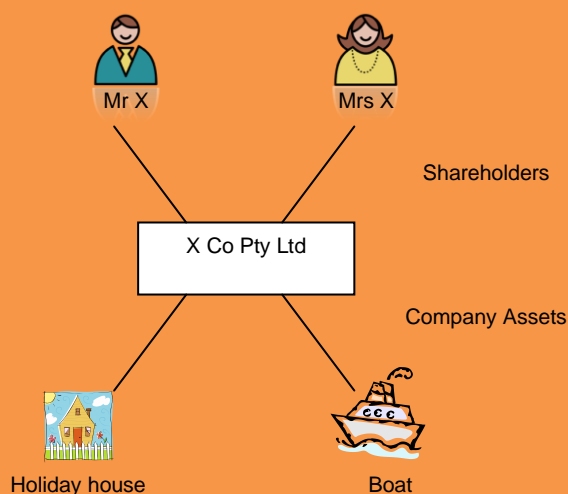
The draft legislation removes the scope for private companies to allow company assets – such as real estate, cars and boats – to be used for free, or at less than their arm's length value without paying tax.

Under the current Division 7A, certain payments and loans by private companies to their shareholders are treated as deemed dividends.

Under the new legislation the definition of “payment” has been expanded so that it includes a lease, licence or right to use company assets.

To illustrate

The provisions may apply where:



This means that all of the following scenarios could fall foul of Division 7A (subject to any exemptions being applicable):

- farmhouses used by farmers where the farmhouse is owned by the farming company and the company (rather than the farmer) is carrying on the farming business;
- any use of a company car, holiday house, boat or other asset by shareholders of the company; and
- the right to use part of a shop or medical practice to live in where the relevant dwelling is owned by a company and the living space is more than 10% of the dwelling.



A QUESTION TO ASK

Are your shareholders using company cars, houses (including farmhouses and holiday houses) or boats?

If you would like further information or require assistance in relation to the above please do not hesitate in contacting our office on 02 9555 1309.

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