

PS LA 2005/3 (GA) - Division 7A - extended timeframe for repayment of a loan or execution of a written loan agreement for the 2003/04 income year

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Practice Statement Law Administration (General Administration)

PS LA 2005/3 (GA)

This law administration practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement [PS LA 1998/1](#). ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

SUBJECT: Division 7A - extended timeframe for repayment of a loan or execution of a written loan agreement for the 2003/04 income year

PURPOSE: To clarify the circumstances under which a taxpayer may have an extended timeframe to repay a loan or execute a written loan agreement for a loan that would otherwise be a deemed dividend for the purposes of Division 7A.

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STATEMENT

1. This practice statement sets out an opportunity, for the 2003/04 income year only, for taxpayers to have an extended period within which to either repay a loan or execute a written loan agreement for a private company loan that would otherwise be a deemed dividend under Division 7A of the *Income Tax Assessment Act 1936*. It recognises that some taxpayers may have misunderstood or been misinformed about the Government's intention to amend the law in this regard.
2. Therefore, as a matter of practical compliance and sensible administration, the Commissioner is prepared to accept that no deemed dividend arises, where a taxpayer can demonstrate that:
 - they have previously complied with the requirements of Division 7A, and there is no evidence of backdating of loan agreements; and
 - the repayment or written documentation requirements have been complied with by the lodgment day for the taxpayer's income tax return. The lodgment day is the earlier of the due date for lodgment and the date of lodgment of the return.

3. A taxpayer may self assess their entitlement to the extended time frame. However the application of this practice statement to the tax affairs of a taxpayer may form part of any future compliance action.

EXPLANATION

4. The Government announced as part of its 2004 Budget that it would amend Division 7A to allow taxpayers up until the time their return is required to be lodged to either repay a loan or execute a written loan agreement for a private company loan that would otherwise be a deemed dividend. Under the law applying to the 2003/04 and earlier years, repayment must be made before the end of the income year in which the loan is taken, or loan documentation is required to be in place at the time the loan is taken. Failure to meet these requirements causes a deemed dividend to be included in the taxpayer's income.
5. This change to the law allows taxpayers, particularly small business, the opportunity to obtain advice from their professional tax advisor before a tax consequence is 'locked in'.
6. The measure has been enacted by *Tax Laws Amendment (2004 Measures No. 7) Act 2005* and applies to the 2004/05 and later years. This practice statement recognises that some taxpayers have genuinely misunderstood or been misinformed about the timing of the Government's intention to amend the law in this regard, and acted on the basis that the amendment had immediate effect, and applied to the 2003/04 year.
7. Confusion may also have been created by the introduction of Subdivision EA in Division 7A, which allowed trusts to place loans on a commercial footing before the earlier of the due date for lodgment and the actual date of lodgment of the trustee's income tax return for the year of income in which the loan was made.
8. This practice statement relieves the harsh result of any misunderstanding, in circumstances where taxpayers act to achieve effective, practical compliance with the intent of the law.

Amendment history

| Date of amendment | Part | Comment |
|--------------------------|-----------------|----------------|
| 12 May 2014 | Contact details | Updated. |
| 2 September 2009 | Contact details | Updated. |

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| Subject references | Deemed dividends Loan agreements Private company |
| Legislative references | ITAA 1936 Div 7A ITAA 1936 109D ITAA 1936 109N |
| Related practice statements | PS LA 1998/1 |
| File references | 05/1489 |
| Date issued | 19 October 2005 |
| Date of effect | 1 July 2003 |