

TD 2015/20A1 - Addendum - Income tax: Division 7A - is a release by a private company of its unpaid present entitlement a 'payment' within the meaning of Division 7A of Part III of the Income Tax Assessment Act 1936?

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Addendum

Taxation Determination

Income tax: Division 7A – is a release by a private company of its unpaid present entitlement a ‘payment’ within the meaning of Division 7A of Part III of the *Income Tax Assessment Act 1936*?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It updates Taxation Determination TD 2015/20 to include reference to Taxation Determination TD 2022/11 *Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of ‘financial accommodation’?* which was published on 13 July 2022.

TD 2015/20 is amended as follows:

1. Preamble

Omit preamble; substitute:

❶ Relying on this Determination

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Determination applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Determination. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Determination.

2. Table of Contents

Insert Table of Contents:

Table of Contents	Paragraph
Ruling	1
<u>Example 1</u>	4
<u>Example 2</u>	8
<u>Example 3</u>	13
Date of effect	18
Appendix – Explanation	19
Release involves crediting	19
Release of UPE that does not give rise to benefit	33

3. Paragraph 1

(a) Omit footnote 1.

(b) After the paragraph, insert new paragraph 1A:

1A. All legislative references in this Determination are to the ITAA 1936, unless otherwise indicated.

4. Paragraph 3

Omit the wording of footnote 2; substitute:

For example, a UPE may be a 'Division 7A loan' to which section 109D has applied, resulting in an amount already having been included in assessable income (for example, because that Division 7A loan was not put on terms satisfying section 109N, and section 109Y (dealing with distributable surplus) did not apply). See Taxation Determination TD 2022/11 *Income tax: Division 7A: when will an unpaid present entitlement or amount held on sub-trust become the provision of 'financial accommodation'?*.

5. Paragraph 4

Omit the paragraph; substitute:

ABC Pty Ltd is the trustee of ABC Trust (a discretionary trust). XYZ Pty Ltd is within the class of potential objects. On 30 June 2023, ABC Pty Ltd resolved to make XYZ Pty Ltd presently entitled to \$100 of the income of the trust estate. Although the amount to which XYZ Pty Ltd was presently entitled was not paid, the subsisting UPE was not a Division 7A loan within the meaning of TD 2022/11 and was not a debt for the purposes of section 109F.

6. Paragraph 5

Omit '2014'; substitute '2025'.

7. Paragraph 8

(a) In the first sentence, omit 'TR 2010/3'; substitute, '*Taxation Ruling TR 2010/3 Income tax: Division 7A loans: trust entitlements (which was withdrawn on 30 June 2022)*'.

(b) In the second sentence, omit 'sole beneficiary, and owner of the UPE,'; substitute 'sole beneficiary and owner of the UPE'.

(c) In the last sentence, omit '*Taxation Ruling*'.

(d) In the first sentence, after '30 June 2022', insert new footnote 3B:

^{3B} The Commissioner's views about when a UPE and amounts put on sub-trust are Division 7A loans are now contained in TD 2022/11.

8. Paragraph 16

Omit '*the Target Trust*'; substitute '*Target Trust*'.

9. Paragraph 18

After 'TR 2006/10', insert '*Public Rulings*'.

10. Paragraph 19

In the heading 'Appendix 1 – Explanation', omit '1'.

11. Paragraph 30

Omit 'whether or not the UPE is held in the main (originating) trust or in a sub-trust (within the meaning in TR 2010/3), and'.

This Addendum applies from 13 July 2022.

Commissioner of Taxation

10 August 2022

ATO references

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