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Improving taxation of loans made by companies to shareholders
C/- Deputy Commissioner, Policy
Inland Revenue Department
PO Box 2198
Wellington, 6140
New Zealand

Email: policy.webmaster@ird.govt.nz

5 February 2026

Dear Sir/Madam,

Improving taxation of loans made by companies to shareholders

Thank you for the opportunity to comment on the consultation on **Improving taxation of loans made by companies to shareholders** prior to its finalisation.

CPA Australia represents the diverse interests of more than 176,000 members, including over 3,500 members in New Zealand, working in over a 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

We make the following summary comments and key points for your consideration:

- CPA Australia supports the proposed reforms to loans made by companies to shareholders that improve integrity while minimising complexity and compliance costs for SMEs. The rule should extend to the associates of shareholders.
- Shareholder loans can also arise for asset purchases or private use of company assets; Inland Revenue (IR) should ensure rules also address asset use taxation.
- The proposed rules should also apply where a trust makes a distribution to a corporate beneficiary, no amount is physically paid but a cash amount representing the distribution is passed/loaned by the company to its shareholders and or their associates.
- If IR's interpretation is correct, current rules may create unintended tax advantage, especially for loans not on arm's length terms.
- Any new regime should focus on non-commercial arrangements, while providing an exemption for commercial loans with proper documentation and arm's length interest.
- A simpler alternative may be that of clarifying that a base price adjustment triggers on strike-off, ensuring overdrawn loans cannot escape tax.
- Australia's Division 7A experience offers valuable lessons but it also highlights the risk of overly complex integrity rules.
- Treating loans as dividends may be workable but adds complexity and burdens to small businesses.
- Rules should ideally apply to close companies, with anti-avoidance provisions addressing larger entities.
- We support the inclusion of non-residents to the proposed rules to avoid inconsistent treatment.
- We do not support a de minimis threshold as it risks encouraging shareholder loans; while commercial, documented loans should be explicitly excluded.
- Transitional complexity can be reduced by applying thresholds only to new lending and using existing shareholder current account balances.
- We agree with taxing outstanding loans on company removal.
- Additional IR4 disclosures will be required to ensure integrity and compliance with the proposed rules.

Please refer to the Appendix for our response to the questions raised in the consultation paper. If you have any queries about this submission, please contact me on jenny.wong@cpaaustralia.com.au or Bill Leung, Tax Technical Advisor on bill.leung@cpaaustralia.com.au.

Yours sincerely,

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Mr Rick Jones
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Acknowledgements

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- Mr Angus Ogilvie FCPA (Aust.), Chair of Tax Committee – New Zealand
- Mr Jeffrey Owens FCPA (Aust.), Tax Committee – New Zealand
- Mr Darshana Elwela, Tax Committee – New Zealand
- Mr Richard Ashby CPA (Aust.), Tax Committee – New Zealand
- Mr Jamil Eldar CPA (Aust.), Tax Committee – New Zealand
- Professor Adrian Sawyer, FCPA (Aust.), Tax Committee – New Zealand
- Mr Peter Loerscher CPA (Aust.), Tax Committee – New Zealand
- Mr Mark Davies, CPA (Aust.), Tax Committee – New Zealand

Appendix

Detailed discussion

Response to discussion questions

Chapter 2 – Context and background – current law

Q1. Do you think this is an accurate summary of the current law? Do you think there are any other rules that are relevant?

No response to this question.

Q2. Are there other reasons why shareholders take drawings or loans from their companies?

Another reason where shareholders take drawings or loans from their companies is to purchase assets for private use or mixed private/business use. For example, land and buildings or cars and yachts.

IR will need to also include taxing rules on the use of company assets by shareholders and their associates. That is, rules that distinguish between those that would apply to depreciating assets and those that would apply to appreciating assets, such as land and buildings:

- for depreciating assets, a rental charge could apply, similar to that of an operating lease, comprising a finance amount (or interest amount), a depreciation component (being the cost of the asset to the lessor) and an amount for the relevant asset's other operating costs.
- for appreciating assets, a usage charge could apply, calculated by multiplying the annual interest rate by the asset's indexed value, which could be updated with an arm's length valuation every five years, thus reducing the need for yearly valuations. The usage charge could also include an amount representing the relevant asset's other operating costs.

The proposed rules should also apply to associates of shareholders as well, i.e., individuals or entities closely connected to a primary entity, often including relatives, partners, or controlled companies/trusts, whose actions can influence or be influenced by the primary entity.

Q3. Do you think New Zealand's current laws for taxing company payments to their shareholders are well understood and complied with?

No response to this question.

Q4. In your experience, do companies maintain reliable records of their ASC and ACDA? If not, why not?

Our members are of the view that companies generally do retain reliable records for ASC and ACDA.

Chapter 3 – Inland Revenue data on shareholder loans

Q5. Are you aware of any reason for the reduction in shareholder loans in 2024, other than the change in the trustee tax rate?

No response to this question.

Q6. Does the data on the use of drawings and other loans to shareholders reflect your observations or experience?

Our members generally have not seen their clients run overdrawn current accounts unless they are in dire straits. They usually avoid overdrawn current accounts because of the adverse income tax consequences which are explained in detail.

Q7. Do you agree that shareholder loans are often linked with company failure?

Our members are of the view that the company will start struggling and the shareholders will need the money to live on, so they will draw it out. The accounts are reported to IR and there is to date no action therefore it is the IR who is left with the problems at the end.

In Australia, shareholder loans themselves are not inherently linked with company failure; rather, their mismanagement, lack of documentation, or use during insolvency can contribute to financial distress and legal problems. A company's failure is typically due to broader financial and operational issues, not the mere existence of a shareholder loan. The problem is not the loan itself but its administration and the financial health of the company when the loan is made or outstanding. Properly managed and documented loans do not increase the risk of business failure.

Chapter 4 – Summary of problem

Q8. Do you agree the current tax rules provide an unintended tax advantage when companies lend funds to shareholders compared with paying taxable dividends?

One of the policy reasons for introducing new rules around taxation of shareholder loans seems to be the significant gap between 28% company tax rate and 39% marginal tax rate. This creates initiative for tax sheltering behaviour and has given rise to several auxiliary policies so far.

If the analysis of the law in the consultation paper is correct, then we agree the current tax rules provide an unintended tax advantage when companies lend funds to shareholders compared with paying taxable dividends. The way we have interpreted the law is that a base price adjustment happens on the date the company is struck off, giving rise to taxable income at that point to the shareholder. The way we have applied the law means that the issue IR describes does not arise.

There is a tax advantage provided under the current rules for debt funding by a company to a shareholder when compared to providing those funds by way of dividend. This is most significant in those circumstances where the lending is not on demonstrably arm's length terms (including in terms of security requirements, interest rate/s applicable and repayment obligations including timing of the same).

Genuine debt arrangements are quite different in terms of the legal rights and obligations of the relevant parties and on this basis, it could be expected there would be a difference in the tax effect of the two options. Therefore, the focus of any reform in this area should be focussed on arrangements which are not comparable to arms' length debt arrangements.

Based on the principle of separate legal personhood of a company and the principle of horizontal equity, there is an argument that the proposed rules should not apply to shareholder loans that are on an arms-length, commercial basis. This could be complemented with safe-harbour rules, for example minimum interest rates, or documentation requirements. For example, Division 7A rules in Australia. The rules could include simplified rules for smaller loans (by analogy with transfer pricing rules).

Q9. Do you agree that the taxation of shareholder loans can be improved?

If IRD's description of the law is correct, we agree that the taxation of shareholder loans can be improved. Legislative reform addressing material shareholder debt arrangements which are not comparable to arm's length debt arrangements would represent an improvement to the current rules. This is on the basis such arrangements are likely, in economic terms, to represent a transfer of value to the shareholder and therefore are effectively a substitute for dividends.

Q10. Do you have any other comments about the problem?

We think a simpler approach could be to clarify that a base price adjustment is triggered when the company is struck off, so that no overdrawn shareholder loans can avoid income tax and the right amount of tax could be collected over time. Our view is that the proposal will result in significant complexity.

Most shareholders in closely held companies hesitate to owe money to their own companies, as they wish to avoid being charged interest on overdrawn current accounts. Therefore, for the most part, any instances of indebtedness on the part of shareholders are minor in terms of quantum and the period of indebtedness.

Chapter 5 – International treatment of shareholder loans

Q11. Do you have any experience with the rules in these jurisdictions? If so, can you share your experiences?

We share our experience of the Australian income tax treatment of shareholder loans, i.e. Division 7A of *the Income Tax Assessment Act 1936* (Division 7A).

Division 7A rules were introduced in Australia on 4 December 1997 as an integrity measure to prevent private company profits from being distributed to shareholders or their associates tax-free. That is, to stop shareholders from disguising profit distributions as non-taxable transactions, like soft loans with no set repayment terms or interest.

Before Division 7A rules, companies could provide money or assets to their owners in ways that avoided the appropriate tax, such as through uncommercial loans or unaccounted payments. The primary purpose is to ensure that profits distributed from a company are taxed appropriately as either salary/wages, legitimate dividends (which are assessable income), or as fringe benefits.

Division 7A ensures that money accessed from a private company is either structured as a genuine, arms-length commercial loan (with a formal agreement, minimum interest, and set term) or is treated as an unfranked dividend and taxed in the recipient's hands at their marginal tax rate. The rules reinforce the legal principle that a private company is a separate legal entity from its owners. A company's money is not the owner's personal money and cannot be accessed for personal use without proper tax consequences.

The rules specifically cover various methods of potential avoidance, including:

- Loans made to shareholders or their associates.
- Payments made by the company for personal expenses (e.g., personal school fees, mortgage repayments).
- Debt forgiveness by the company for debts owed by shareholders or their associates.
- Benefits provided through interposed entities, such as trusts, to channel funds indirectly.

The problem with Division 7A rules is its complexity. The rules also cover a wide range of transactions beyond simple cash loans, including:

- Payments made by the company on behalf of a shareholder for personal expenses.
- The use of company assets (e.g., cars, property) for personal use without proper market-value compensation.
- The forgiveness of a debt owed by a shareholder.
- Unpaid Present Entitlements from a trust to a company beneficiary (an area of ongoing legal complexity and ATO scrutiny).

Furthermore, the rules have been evolving to address new schemes and structures that circumvent its operation. This results in legislative amendments and the Australian Taxation Office (ATO) in constantly updating its Division 7A guidance and scrutinises arrangements. In particular, those perceived as attempts to circumvent the rules, such

as "looped loans" (using company funds to make a repayment just before the year-end deadline, only to redraw it shortly after). Court decisions and ATO rulings can also change the established understanding of the law, creating uncertainty for practitioners and business owners. As such, there is an inherent tension between ensuring comprehensive coverage of transactions and the ongoing need to update Division 7A rules in response to emerging tax avoidance strategies in Australia.

Q12. Are you aware of rules from other countries that could work effectively in New Zealand?

No response to this question.

Q13. Do you agree that a simpler rule with fewer exceptions would be more effective?

As an example, due in part to its complexity, there is a general lack of awareness and good understanding of Division 7A by small businesses and their tax agents in Australia. Simpler, clearer rules would make it easier for taxpayers to understand their obligations, leading to better voluntary compliance and fewer errors that require ATO intervention. Based on the Australian experience, it appears that a simpler Division 7A rule would be more effective. The current rules are widely considered complex and difficult to apply correctly, which results in significant compliance costs and a high rate of inadvertent errors in Australia.

Chapter 6 – Shareholder loans treated as dividend

Q14. What is your opinion on the proposal to treat shareholder loans as dividends? Is it fair and workable?

We are of the view that treating shareholder loans as dividends will only increase the complexity in an already complex system, especially in a small and medium sized enterprise context.

Based on the Australian income tax experience, the measure to treat shareholder loans as dividends is generally seen as workable from a tax administration perspective because it provides a clear mechanism to identify and tax disguised profit distributions. However, its fairness is debated, with concerns raised about its potentially harsh impact on small businesses and the compliance burden it places on those who might not be intentionally avoiding tax.

Q15. Is the proposed time period of 12 months from the end of the income year in which the loan is made before the rule applies appropriate? If not, what time period would you suggest and why?

We agree with 12 months if IR is going ahead with the proposal. It needs to be stressed that shareholder current accounts are always moving up and down as the year progresses. The complexity involved in 'weeding out' the culprits is not justified in our view, especially when a much simpler solution is available as explained in Q10 above.

Q16. Do you agree that the rule should apply broadly to all shareholder loans made by any New Zealand-resident company to any shareholder that is a natural person or a trustee?

- We would rather have the rule only apply to close companies, and then, although we do not agree with the general anti-avoidance rule, we could use that to address the matter with bigger entities. A broad application ensures consistency across all resident companies, preventing a scenario where some companies might exploit loopholes to avoid the rules while others comply. The proposed rule should also apply to the associates of a shareholder, for example, the spouse of the shareholder, in order to avoid circumvention of the proposed rule. The rule should also apply where a trust makes a distribution to a corporate beneficiary, no amount is physically paid but a cash amount representing the distribution is passed/loaned by the company to its shareholders and or their associates.

Q17. Should the rule apply to non-resident companies and shareholders?

Yes, the rule should apply to non-resident companies and shareholders for two reasons. Firstly, not all dividends have a 0% non-resident withholding tax (NRWT) that applies to them. For example, a capital dividend on liquidation

can have 15% NRWT apply in certain situations. Secondly, would treating taxpayers differently based on whether they are tax resident trigger an issue with the anti-discrimination clauses in some of our double tax agreements? Even if it does not, or such a rule is seen as a treaty override, we question what possible defensible policy reason can be given for treating non-residents, who might be based in tax havens, better than tax residents? In Australia, the legislation ensures Division 7A applies to Australian resident shareholders of non-resident private companies. This prevents the use of offshore companies to avoid these provisions.

Q18. Do you consider that the proposed de minimis threshold of $50,000 is appropriate? If not, what level do you think would be better and why?

From the cost-benefit perspective compliance-wise, there is an argument to increase de minimis thresholds from the proposed limits (dollar value and term of the loan outstanding). Having said that, the "complying loans" mechanism in Australia is a better approach policy-wise. Furthermore, a high de minimis threshold may have the adverse consequence of encouraging shareholder loans.

At present, there is no specific de minimis monetary threshold in Australia below which Division 7A is disregarded for all transactions. This is because it is an anti-avoidance integrity rule designed to prevent any amount of private company profits from being distributed to shareholders or their associates tax-free. The core policy intent of Division 7A is to ensure that all disguised distributions of private company profits are treated as assessable unfranked dividends in the hands of the recipient, just like any normal dividend. Introducing a de minimis threshold would create a loophole, allowing small, untaxed amounts to be extracted regularly without consequence, which would undermine the purpose of the legislation. The proposed $50,000 de minimis threshold could inadvertently encourage taxpayers to legally withdraw company funds for private use up to this limit.

However, as noted above there is generally an aversion on the part of shareholders in terms of having indebtedness to companies when interest will be charged on that indebtedness.

Q19. Do you have any views on the possible exceptions to the proposed rule? How would you deal with the complexities that may arise from those exceptions?

The main additional exception to the rule which should be considered is to provide an exclusion for those debt arrangements which are materially commercial/arms' length in nature and have executed complying loan agreements in writing. This is a similar principle to that applied in Australia where documented debt arrangements which meet certain criteria are excluded from their equivalent rules.

Demonstrably, arms' length debt arrangements which meet commercial tests dealing with security held, interest rates, and repayment obligations which do not exceed a certain length of time (we would propose in the region of 3 - 5 years) should be excluded. For example, there could be a requirement that such loans have at least quarterly repayments made on a principal and interest basis.

There would clearly be compliance costs associated with documenting such loans and then ensuring the loan terms are adhered to. However, these compliance costs would only be incurred by those shareholders wanting to apply the exclusion, and costs associated with compliance with the loan terms should be no different from costs incurred in meeting the obligations owed to an arms' length funder. We would anticipate there may be disclosure obligations in the shareholder's income tax return in relation to the use of such an exclusion in order to provide the Commissioner with a basis for compliance activity.

Q20. Are there other exceptions that we should consider?

No response to this question.

Q21. Do you have any views on our proposal to exclude existing loans from the rule while still including the balance when calculating the de minimis?

Complexity and compliance costs would be reduced if only new lending was included in determining with the proposed de minimis is exceeded or not.

Q22. Do you have any comments on how the complexity of applying the de minimis to an existing shareholder current account can be managed? Is using the most recently filed income tax return amount appropriate?

Accountants prepare the shareholder current account in much the same way as a bank account. They can work out the exact balance on 4 December 2025, so IR should be able to apply the rules with that amount. IR could always say that amount, but if it cannot be determined, then the 31 March 2025 balance date amount (assuming a 31 March balance date etc).

Q23. Do you agree that specific integrity rules are required? Are there any other situations where you consider integrity rules would be necessary?

The proposed measure will require an anti-avoidance rule to stop its circumvention. That is, an anti-avoidance provision (an anti-refinancing rule) within the measure that operates to prevent shareholders or their associates from circumventing the dividend treatment by using non-genuine loan repayments before the rule applies from the end of the income year, and then re-draws the loan(s) in the subsequent income year.

There may also be anti-avoidance rules to prevent the application of repayments to ‘new’ lending in preference to older lending, in order to retain pre-December 2025 or excluded loan balances indefinitely (proposed to be excluded from the rules).

Q24. Do you have any views on the other design details? In particular, whether the deemed dividend can be imputed, how repayment should be dealt with and the relationship with the financial arrangements rules.

Imputation credits should be able to be applied at the time or retrospectively, if the taxpayer so elects. A deemed dividend amount should be treated as offsetting the loan amount for tax purposes, and the taxpayer ends up with a different tax balance for the loan vs the commercial balance. This is not strange, and happens all the time, for example accounting and tax depreciation rates are different, a partnership is a person for GST purposes, but not for commercial law purposes, and so on.

Regarding other exclusions, why not exclude all situations where an overdrawn current account would not give rise to a deemed dividend – the CD 27 exclusions.

Q25. Do you have any comments on whether changes to the IR4 company tax return would be desirable?

The IR4 company tax return will need to add a question for taxpayer to provide the total amount on “Loans to shareholders and their associates”. It also needs to add a question to provide the total amount on “Loans to shareholders and their associates pre-4 December 2025”.

In the event a further exclusion is added per the suggested ‘commercial loan’ exclusion (refer question 19 above) there may also need to be an additional disclosure noting the application of the exclusion and the total amount of the exclusion.

Chapter 7 – Outstanding shareholder loans treated as shareholder income once company ceases

Q26. Do you agree with the proposal to tax any outstanding loans as income of the shareholder when the company is removed from the Companies Register?

We agree with the proposal. In Australia, if the company is simply deregistered without formal debt forgiveness, the debt may be considered to have ended. The Australian Taxation Office (ATO) may still consider this a 'deemed dividend' event under Division 7A if a reasonable person would conclude the benefit was provided because of the individual's status as a shareholder.

Q27. Which of the two options for taxing the outstanding balance would you prefer, and why?

We prefer deeming a base price adjustment to occur.

Q28. Do you have any comments on the impact of the proposed implementation date and whether transitional rules would be required?

No response to this question.

Q29. How should reinstatement of the company be treated? Would three months be a sufficiently long period to allow reinstatement of companies that are inadvertently removed?

Regarding re-instatement, we suggest allowing the tax laws to follow the commercial position. When a company is re-instated everything that was there before it was struck off is given back to it. This would effectively reverse out the base price adjustment and re-instate the financial arrangement as it would have been had the company continued throughout. The tax return would have to be refiled to reflect this new position, as well as any tax returns in the intervening period, but the company could file non-active company status for those periods.

Q30. Do you consider that it would be appropriate to impose reporting obligations on liquidators?

We are of the view that there is enough reporting obligations imposed on liquidators already.

Q31. If the dividend option is progressed, do you have any views on whether the dividend should be reduced by the amount of ASC and ACDA of the company, or should it be able to be imputed?

No response to this question

Q32. If the dividend option is progressed, do you have any comments on the potential interaction with the financial arrangements rules?

No response to this question.

Q33. Can you see any other complexities with the proposal that would need to be addressed?

The Issues Paper refers to Māori Companies. This is not a term we are familiar with and a term that is not defined in section YA 1. Perhaps it meant to refer to Māori Authorities or Māori Incorporations? If this is the case, our view is that the same rules should apply to Māori Authorities as to companies.

Chapter 8 – Improved record keeping and reporting

No response to the questions in Chapter 8.

Chapter 9 – Treaty of Waitangi considerations

No response to the questions in Chapter 9.