Division 7A Checklist
2010
**Division 7A Checklist 2010**

The following checklist will assist you to determine whether Division 7A applies.

To be completed by all private companies each year.

<table>
<thead>
<tr>
<th>A1. Does the private company have a Distributable Surplus at the end of the year of income (section 109Y)?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>
| If the answer is **yes**, Division 7A **can** potentially apply. **Continue to B1.**
If the answer is **no**, Division 7A **cannot** result in the private company being deemed to have paid an unfranked dividend (in which case there is no need to proceed). |

1. Note that where the Distributable Surplus of the private company is less than the amount of any deemed unfranked dividend calculated in accordance with Division 7A, the amount of the deemed unfranked dividend will be proportionately reduced (i.e. capped) to the balance of the Distributable Surplus existing in the private company.

   Note also that the Commissioner may include the value of assets not shown in the company’s accounting records for the purposes of determining the company's distributable surplus as discussed in Taxation Determination TD2009/5.

<table>
<thead>
<tr>
<th>B1. Did one of the following transactions occur during the current financial year?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>The private company made a payment to a shareholder or an associate of a shareholder, other than a loan (section 109C)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A loan provided by the private company to a shareholder or an associate of a shareholder prior to 4 December 1997 was varied by increasing the amount of the loan or extending the term of the loan (section 109D(5))?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The private company made a loan to a shareholder or an associate of a shareholder (sections 109D – 109E)?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>A debt owed by a shareholder or an associate of a shareholder to the private company was forgiven by the private company (section 109F)?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| A debt owed by a shareholder or an associate of a shareholder to the private company, was assigned to a new creditor being:
  - an associate of the debtor or
  - a person who is party to an arrangement with the debtor about the assignment and a reasonable person would conclude that the new creditor would not call on the debt (Subsection 109F(5))? |

If the answer to any of the above is **yes**, continue to C1.

If the answer to all of the above is **no**, continue to D1.

2. Note subsection 109C(3) provides that a payment means—
   - a payment to the extent that: it is to the entity, on behalf of the entity or for the benefit of the entity, and
   - a credit to the extent that: it is to the entity, on behalf of the entity or for the benefit of the entity, and
   - a transfer of property to the entity.

   Section 109CA has been inserted effective from 1 July 2009 to expand the definition of payment to include the provision of an asset by a private company to a shareholder or associate of a shareholder for their own use. Broadly, the amount of the payment will be the amount that would have been paid for the provision of the asset (e.g. holiday home or yacht) if the parties had been dealing at arm’s length. In determining that market value the Commissioner will also have regard to the period of time during which the asset was not available for use by the private company. The provision will not apply where the value of the usage is less than $300, the amount would otherwise have been deductible as a once-only deduction to the shareholder or associate or in respect of certain residences.

3. The ATO has issued Taxation Ruling TR2010/3 which sets out circumstances in which certain unpaid present entitlements made by a trustee of a trust to a private company beneficiary will be regarded as a loan under section 109D of the general provisions of Division 7A and thus a deemed dividend. Broadly, the ATO contend that the ruling will potentially apply to certain UPEs that have been documented or accounted for as ‘actual loans’ whether made before or after 16 December 2009. However, where the unpaid present entitlement has not been documented or accounted for in this way, the ruling will only apply prospectively from 16 December 2009 to ‘deem’ such amounts to be loans in certain circumstances. The application of these rules is detailed in the Unpaid Present Entitlements (UPEs) Fact Sheet, which is available on the taxation knowledge portal on the CPA Australia website at cpaustralia.com.au/cps/rde/xchg/cpa-site/hs.xsl/knowledge-taxation-toolkit-fact.html. However, it should be noted that the above ruling is technically complex and that specialist advice may be required.

4. Note subsection 109F(3) provides that a debt is forgiven where the amount of the debt would be forgiven under section 245 – 35 of Schedule 2C. Broadly, this would include where the debt is realised, waived or otherwise extinguished or the debt is deemed to be forgiven under a statute of limitations.
## Division 7A Checklist 2010

### C1. Does the transaction identified in B1 satisfy any of the following criteria?  

<table>
<thead>
<tr>
<th>Description</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>The payment made by the private company represents the repayment of a genuine debt (section 109J).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The payment or loan made by the private company was made to another private company (section 109K).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The payment or loan is otherwise assessable to the shareholder or an associate of the shareholder (section 109L).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The loan was made in the ordinary course of business of the private company and on arm’s length terms (section 109M).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The loan or payment represents a distribution made by a liquidator in the course of winding-up a company (section 109NA).</td>
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<td></td>
</tr>
<tr>
<td>The loan represents a loan made to employees for the purpose of purchasing shares or rights under an employee share scheme defined in Div 83A (section 109NB).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The loan was established on excluded loan terms (section 109N).</td>
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<td></td>
</tr>
<tr>
<td>Under section 109N, a loan will be established on excluded loan terms where, prior to the earlier of the lodgement due date or the actual lodgement date of the income tax return of the private company for the year in which the loan is made:</td>
<td></td>
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</tr>
<tr>
<td>• the loan is established under written loan agreement</td>
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</tr>
<tr>
<td>• the rate of interest payable on the loan for years proceeding the year the loan is first established is equal to the benchmark interest rate (being the Indicator Lending Rates – Bank variable housing loans interest rate published by the Reserve Bank) of that particular year and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• the term of the loan does not exceed 25 years where the loan is secured by first registered mortgage, or seven years in all other cases.</td>
<td></td>
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</tr>
<tr>
<td>The loan was fully repaid before the earlier of the due date for lodgement of the private company’s return of income for the current year and the actual date of lodgement of the private company’s return of income for the current year (sub-sections 109D(1)(b) and 109D(6)).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The forgiven debt was owed to the private company by another private company (sub-section 109G(1)).</td>
<td></td>
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</tr>
<tr>
<td>Other exclusions or exemptions relating to forgiven debts may apply, including the ‘undue hardship’ exemption (sub-sections 109G(2), (3) &amp; (4)) and Practice Statement PS LA 2006/2 (GA) relating to statute barred loans (note that this Practice Statement should not be regarded as a license to write off and clean out old loans).</td>
<td></td>
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</tr>
</tbody>
</table>

If the answer to any of the above is **yes**, the loan or payment **will not be** classified as a deemed unfranked dividend in the current year.

If the answer to each of the above is **no**, the loan, payment or debt forgiveness **will be** classified as a deemed unfranked dividend in the current year (unless the Commissioner exercises discretion otherwise), subject to the amount of the Distributable Surplus at the end of the current year and subject to C2 below.

The private company taken to pay the unfranked dividend will no longer be required to automatically debit its franking account when a deemed dividend arises.

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4. Note that if the loan was established as an excluded loan in the current financial year, a minimum repayment will not be required to be made on the loan in the current financial year. This is on the basis that the first minimum repayment is only required to be made in the year of income after the year in which the loan was first established. The relevant benchmark interest rate for the 2009-10 tax year is 5.75% as per Taxation Determination TD2009/16.

5. There are specific exemptions available for payments that fall within section 109CA (whereby a shareholder or entity uses an asset owned by the company).

### C2. The Commissioner’s Discretion

<table>
<thead>
<tr>
<th>Description</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxpayers may apply in writing to the Commissioner requesting the Commissioner to apply his discretion to disregard the deemed dividend or frank the deemed dividend. Has the Commissioner exercised his discretion in the taxpayer’s favour?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If the answer is **no**, continue to D1.

If the answer is **yes**, the loan or payment will not be classified as a deemed unfranked dividend in the current year.

### D1. Amalgamated loans (section 109E)

<table>
<thead>
<tr>
<th>Description</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. In relation to loans established on excluded loan terms in prior years (in accordance with section 109N), has a minimum repayment been made on the loan in the current financial year?</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

If the answer is **yes**, continue to question (b) within D1.

If the answer is **no**, continue to question (c) within D1.
D1. Amalgamated loans (section 109E) (Continued)

b. Was the payment made with the intention to obtain a loan from the private company of an amount similar to or larger than the payment (section 109R)?

If the answer is no, the shortfall in the minimum yearly repayment of the loan in that income year will not be classified as a deemed unfranked dividend.6

If the answer is yes, the shortfall in the minimum yearly repayment of the loan in that income year will be classified as a deemed unfranked dividend.

6. Note that Tax Laws Amendment (2010 Measures No.2) Act inserted section 109R(2) which will disregard a minimum yearly repayment on or after 1 July 2009 if it could be reasonably concluded that the shareholder or associate borrowed a similar or larger amount from the private company before the repayment was actually made with the intention to use that loan to fund the minimum yearly repayment.

c. Has the Commissioner made a decision in writing under section 109RD to extend the date by which the minimum yearly repayment is required to be made because of circumstances beyond the taxpayer’s control?

If yes, and the minimum yearly repayment was paid by the required time, no deemed dividend will arise.

If no, continue to question (d) within D1.

d. Was the Commissioner satisfied that the taxpayer would suffer undue hardship if the private company were taken under section 109E to pay a dividend to the taxpayer at the end of the current year because of the loan (section 109Q)?

If the answer is no, continue to question (e) within D1.

If the answer is yes, the shortfall in the minimum yearly repayment of the loan in that income year will not be classified as a deemed unfranked dividend.

e. Taxpayers may apply in writing to the Commissioner requesting the Commissioner to apply his discretion to disregard the deemed dividend or frank the deemed dividend. Has the Commissioner exercised his discretion in the taxpayer’s favour?

If the answer is no, the shortfall in the minimum yearly repayment of the loan in that income year will be classified as a deemed unfranked dividend, subject to the amount of the Distributable Surplus at the end of the current year.

If the answer is yes, the loan or payment will not be classified as a deemed unfranked dividend in the current year.

Continue to E1.

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E1. Was a payment or loan made through an interposed entity in the current financial year (section 109T)?

a. Did the private company provide a loan or a payment to an interposed entity (including a company, partnership, trust or individual) in the current financial year which the interposed entity then provided to the shareholder or associate of the private company (section 109T)?7

7. Note that the first set of interposed entity arrangement provisions will not apply where the loan or payment provided from the private company to the interposed entity has already been classified as a deemed unfranked dividend in accordance with Division 7A (subsection 109T(3)).

If the answer is yes, continue to question (b) within E1.

If the answer is no, continue to F1.

b. Was the loan from the private company to the interposed entity (first stage loan) and the loan from the interposed entity to the shareholder or associate (second stage loan) put on excluded loan terms under section 109N before the earlier of the due date or actual date of lodgement of the private company’s income tax return?

If the answer is no, the first set of interposed entity arrangement (“IEA”) provisions could apply.8

If the answer is yes, ensure that minimum yearly repayments are made for both the first stage and second stage loan in subsequent income years.

8. Broadly, the IEA provisions apply where a reasonable person would conclude (having regard to all of the circumstances) that the private company made the payment or loan to the interposed entity solely or mainly so that the interposed entity would provide a payment or loan to the target entity.

The result of the IEA provisions applying is that where the target entity is a shareholder or an associate of a shareholder of the private company, there will be a deemed loan or payment (and thus potentially a deemed unfranked dividend paid) provided directly from the private company to the target entity.

Note also that where the target entity is another private company, the deemed payment or loan will not be classified as a deemed unfranked dividend in accordance with section 109K.
### Division 7A Checklist 2010

**E1. Was a payment or loan made through an interposed entity in the current financial year (section 109T)? (Continued)**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
</table>

**Example**

Company A makes a loan of $50,000 to Company B (a related company with no Distributable Surplus) on the condition that Company B will make a loan of the same amount to Mr A, a shareholder in Company A. Ordinarily, the loan from Company A to Company B would not be classified as a deemed unfranked dividend because of section 109K. Furthermore, the loan from Company B to Mr A would not be classified as a deemed unfranked dividend because Company B has no Distributable Surplus.

Company B is an interposed entity in relation to Company A. Mr A is the target entity in relation to the loan of $50,000 made by Company A to Company B. Company A will be deemed to have paid an unfranked dividend of $50,000 to Mr A, subject to the amount of the Distributable Surplus of Company A at the end of the year of income in which Company B makes a loan of $50,000 to Mr A.

*Continue to F1.*

**F1. Payment or loan by interposed entity relying on guarantee by private company (section 109U)**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Did the private company guarantee a loan in the current year?

If the answer is *yes*, the second set of IEA provisions could apply.

Broadly, the second set of IEA provisions apply where:

- a reasonable person would conclude (having regard to all the circumstances) that the private company ("the head company") gave the guarantee to a second private company ("the first interposed entity") solely or mainly so that either the first interposed entity would make a loan to another entity ("the target entity") or a third private company interposed between the first interposed entity and the target entity ("the second interposed entity") would make a payment or loan to the target entity and

- the amount of the payment or loan to the target entity is greater than the Distributable Surplus for the first interposed entity or, if appropriate, the second interposed entity.

The result of the second set of IEA provisions applying is that where the target entity is a shareholder or associate of a shareholder of the head company, there will be a deemed loan or payment made directly from the head company to the target entity and thus, potentially, a deemed unfranked dividend paid.9

*Continue to F2.*

9. Note that where the target entity is another private company, the deemed payment or loan by the head company will not be classified as a deemed unfranked dividend in accordance with section 109K.

**F2. Did a private company provide a loan guarantee (section 109UA)?**

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

a. Has the private company provided a guarantee to enable a loan to be provided to a shareholder or an associate of a shareholder of the private company in any year of income?

If the answer is *yes* and the private company is required to make a payment under the guarantee in the current year (i.e. the guarantee is ‘called on’ in the current financial year), the private company may be deemed to have made a payment (and potentially to have paid a deemed unfranked dividend) directly to its shareholder or associate.10

If the answer is *no*, continue to question (b) within F2.

10. Note that if the recipient of the deemed payment (i.e. the entity that defaults on the loan) is another private company, the deemed payment will not be classified as a deemed unfranked dividend in accordance with section 109K.

b. If the private company is required to make a payment under the guarantee in the current year (as a result of the shareholder defaulting on the loan guaranteed by the private company), has the shareholder entered into a loan with the private company which meets the excluded term requirements on s109N?

If *yes*, the loan or payment will not be classified as a deemed unfranked dividend in the current year. However, the shareholder or associate should ensure that minimum yearly repayments are made in subsequent years.

If *no*, a deemed unfranked dividend will arise, subject to the amount of the Distributable Surplus.

*Continue to G1.*
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G1. Was the private company loan refinanced in the income year?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Was the private company loan refinanced in the income year?

Certain loans can be refinanced without triggering a deemed dividend. Unsecured loans which are subsequently secured by a registered mortgage over real property can have their loan term extended. On a similar basis, a secured loan can be converted into an unsecured loan with a corresponding reduction in the loan term.

**Example**

Hilda Pty Ltd has made a loan secured by a mortgage over real property to an associate of a shareholder, Sachin. The term of the loan was 25 years. However, after 20 years, the terms of the loan are changed and it is no longer secured by a mortgage over real property. If the expired term of the old secured loan was less than 18 years, the maximum term of the new loan will be seven years. However, in this particular instance, the original secured loan had already been in place for more than 18 years. As a result, in the written agreement governing the new loan, the maximum term of the loan can be five years (i.e. 7 years – (20 years – 18 years) = 5 years).

A private company loan can also be refinanced without triggering a deemed dividend when the loan becomes subordinated to another loan from another entity, and the refinancing of the private company loan by the recipient shareholder/associate takes place because of that subordination.

Continue to H1.

H1. Loan by trustee on or after 12 December 2002 to a shareholder or an associate of a shareholder of a private company, where a trustee holds an unpaid present entitlement on behalf of the private company which would itself not otherwise be regarded as a loan and deemed dividend under Taxation Ruling TR2010/3 (Subdivision EA).

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

Note that the ATO has stated in Taxation Ruling TR2010/3 that if an unpaid present entitlement has been treated as a loan under section 109D of the general provisions of Division 7A, Subdivision EA will not also apply. This statement ensures that the unpaid present entitlement is not subject to potential double taxation. However, note that there may be Division 7A implications arising in respect of any payments or loans made by a trustee who holds an unpaid present entitlement owed to a private company beneficiary under Subdivisions EA or EB depending on the circumstances. However, it should be noted that the above ruling is technically complex and that specialist advice may be required. The instructions provided below apply where the provisions of Subdivision EA are met.

a. Did the trustee make a loan to a shareholder, or an associate of a shareholder, of a private company (except a shareholder or associate that is a company) during the current year that was not fully repaid before the earlier of the due date for lodgement and the actual date of lodgement of the trustee’s return of income for the trust for the current year?

If the answer is no to question (a), continue directly to H3.

If the answer is yes to question (a), continue to questions (b) and (c) within H1.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

b. Was the private company presently entitled to an amount from the net income of the trust estate at the time the loan was made?

c. Where the loan was made by the trust on or after 19 February 2004, did the private company become presently entitled to an amount from the net income of the trust estate after the loan was made but before the earlier of the due date for lodgment and the actual date of lodgment of the trustee’s return of income for the trust for the current year?

If the answer is no to questions (b) and (c), continue directly to H3.

If the answer is yes to either question (b) or question (c), continue to question (d) within H1.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
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</table>

d. Was the whole amount of the present entitlement not paid to the private company from the trust estate before the earlier of the due date for lodgment and the actual date of lodgment of the trustee’s return of income for the trust for the current year?

If the answer is yes to question (d), continue to H2.

If the answer is no to question (d), Subdivision EA will not be applicable to the loan. Continue to H3.

H2. Loan placed on excluded terms.

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

Did the trustee and the shareholder or shareholder’s associate place the loan on excluded terms before the earlier of the due date for lodgment and the actual date of lodgment of the trustee’s return of income for the trust for the current year?
## Division 7A Checklist 2010

### H2. Loan placed on excluded terms. (Continued)

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
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</tbody>
</table>

If the answer is **yes**, Subdivision EA will not be applicable to the loan.

If the answer is **no**, the trust may be deemed to have paid a deemed unfranked dividend to the shareholder (or associate of a shareholder) of the private company.

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### H3. Payment by trustee on or after 12 December 2002 to a shareholder, or an associate of a shareholder, of a private company, in circumstances where a trustee holds an unpaid present entitlement on behalf of the private company (Subdivision EA).

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
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<td></td>
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</tbody>
</table>

Note that the ATO has stated in Taxation Ruling TR2010/3 that if an unpaid present entitlement has been treated as a loan under section 109D of the general provisions of Division 7A, Subdivision EA will not also apply. This statement ensures that the unpaid present entitlement is not subject to potential double taxation. However, note that there may be Division 7A implications arising in respect of any payments or loans made by a trustee who holds an unpaid present entitlement owed to a private company beneficiary under Subdivisions EA or EB depending on the circumstances. However, it should be noted that the above ruling is technically complex and that specialist advice may be required. The instructions provided below apply where the provisions of Subdivision EA are met.

1. **Did a trustee make a payment to a shareholder, or an associate of a shareholder, of a private company (except a shareholder or associate that is a company) during the current year, other than a loan?**
   - Yes
   - No

   If the answer is **no** to question (a), **continue directly to H4**.

   If the answer is **yes** to question (a), **continue to question (b) within H3**.

2. **Was the payment a discharge or a reduction in a present entitlement of the shareholder or an associate of the shareholder that is wholly or partly attributable to an amount that represents an unrealised gain12 in the trust?**
   - Yes
   - No

   If the answer is **no** to question (b), **continue directly to H4**.

   If the answer is **yes** to question (b), **continue to questions (c) and (d) within H3**.

3. **Note sub-section 109XA(7) defines an unrealised gain as ‘any unrealised gain, whether of a capital or income nature’. A common example is a capital profit generated from the revaluation of an asset.**

4. **Was the private company presently entitled to an amount from the net income of the trust estate at the time the payment was made?**
   - Yes
   - No

   If the answer is **no** to questions (c) and (d), **continue directly to H4**.

   If the answer is **yes** to either question (b) or question (c), **continue to question (e) within H3**.

5. **Was the whole amount of the present entitlement not paid to the private company from the trust before the earlier of the due date for lodgment and the actual date of lodgment of the trustee’s return of income for the trust for the current year?**
   - Yes
   - No

   If the answer is **yes** to question (e), the trust may be deemed to have paid a deemed unfranked dividend to the shareholder (or associate of a shareholder) of the private company.

   If the answer is **no** to question (e), Subdivision EA will not be applicable to the payment.

   **Continue to H4**.
H4. Debt forgiven by trustee on or after 12 December 2002 in favour of a shareholder, or an associate of a shareholder, of a private company in circumstances where a trustee holds an unpaid present entitlement on behalf of the private company (Subdivision EA).

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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</table>

Note that the ATO has stated in Taxation Ruling TR2010/3 that if an unpaid present entitlement has been treated as a loan under section 109D of the general provisions of Division 7A, Subdivision EA will not also apply. This statement ensures that the unpaid present entitlement is not subject to potential double taxation. However, note that there may be Division 7A implications arising in respect of any forgiveness of debts made by a trustee who holds an unpaid present entitlement owed to a private company beneficiary under Subdivisions EA or EB depending on the circumstances. This ruling is technically complex and specialist advice may be required. The instructions provided below apply where the provisions of Subdivision EA are met.

a. Was all or part of a debt owed to a trustee by a shareholder or an associate of a shareholder of a private company (except a shareholder or associate that is a company) forgiven during the current year?

If the answer is no to question (a), you have completed the checklist.

If the answer is yes to question (a), continue to questions (b) and (c) within G4.

13. Note sub-section 109F(3) provides that a debt is forgiven where the amount of the debt would be forgiven under section 245−35 of Schedule 2C. Broadly, this would include where the debt is released, waived or otherwise extinguished or where the debt is deemed to be forgiven under a statute of limitations.

b. Was the private company presently entitled to an amount from the net income of the trust estate at the time the debt was forgiven?

c. Where the debt was forgiven by the trust on or after 19 February 2004, did the private company become presently entitled to an amount from the net income of the trust estate after the debt was forgiven but before the earlier of the due date for lodgment and the actual date of lodgment of the trustee’s return of income for the trust the current year?

If the answer is no to questions (b) and (c), you have completed the checklist.

If the answer is yes to either question (b) or question (c), continue to questions (d) within H4.

d. Was the whole amount of the present entitlement not paid to the private company from the trust before the earlier of the due date for lodgment and the actual date of lodgment of the trustee’s return of income for the trust for the current year?

If the answer is yes to question (d), the trust may be deemed to have paid a deemed unfranked dividend to the shareholder (or associate of a shareholder) of the private company.

If the answer is no to question (d), Subdivision EA14 will not be applicable to the debt forgiveness.

14. Note that Tax Laws Amendment (2010 Measures No.2) Act (2010) introduces Subdivision EB which expands any potential application of Subdivision EA on or after 1 July 2009 to potentially include the following circumstances:

- where a trust makes a payment or loan, or forgives a loan, to a shareholder or an associate of a shareholder of a private company, and the company holds an unpaid present entitlement from an interposed trust which has been inserted between the first trust and the private. This will only apply where it can be reasonably concluded that the second trust was inserted between the first trust and the private company under an arrangement solely or mainly relating to an unpaid present entitlement indirectly held by the first trust and

- where a trust makes a payment or loan, or forgives a loan, to a shareholder or an associate of a shareholder of a private company through one or more entities interposed between the trust and the shareholder or associate. This will only apply where it can be reasonably concluded that the entity was interposed solely or mainly as part of an arrangement involving a payment, loan or debt forgiveness made by the trust via an interposed entity to a shareholder or an associate of a shareholder.

You have completed the checklist.