Small Business Guide
Using your company's money or assets

Are you a director or shareholder of a small business? If you are, this guide will help you understand when you can take money out of your company or use its assets. It will show you the right way to report these transactions and keep proper records.

Key points

- Your company is a separate legal entity from you as a director or shareholder.
- The money the business earns and its assets do not belong to you, they belong to the company.
- If you take money out of the business or use its money or assets for yourself or your family, it needs to be reported and you must keep appropriate records.

How can I use my company's money or assets for myself?

You might take money out of the company or use its assets for private purposes through:

- salary, wages or directors fees
- repayments of a loan you have previously made to the company
- a fringe benefit, such as an employee using a company car
- dividends (a formal distribution of the profits)
- a loan from the company.

There are different reporting and record-keeping requirements for each of these circumstances.

This information also applies to:

- any individual or entity that is an 'associate' of a shareholder, which may include a relative, partner, spouse, or another entity controlled by the shareholder (such as an associated company or trust)
- someone who has previously been a shareholder (or an associate of such a shareholder), such as a former partner or spouse.

How do I record and report my use of the company's money or assets?

Salary, wages or directors fees

Directors or shareholders of a company can be paid a salary, wages or directors fees depending on their contract with the company.

- The company must withhold tax from the payments, make compulsory employer superannuation contributions, and report payroll information to us.
- You must report any salary, wages or directors fees you receive from the company in your individual tax return.

For more information, see **ato.gov.au/employers**

Fringe benefits

Fringe benefits tax (FBT) applies when employees or their family or other associates, including directors of a company, receive certain benefits from their employer. This could be a gym membership or reimbursement of expenses, or company assets used for private purposes (for example, the company car).

- The company must lodge an FBT return and pay if it has an FBT liability.
- You (the recipient of a benefit) do not need to report the fringe benefit in your income tax return, unless it's reported as a reportable fringe benefits amount on your income statement or payment summary.

For more information, see **ato.gov.au/FBT**

Repayments of a loan to the company

If a shareholder or director has previously loaned money to the company, the company can make repayments to the shareholder or director.

- The company cannot claim a deduction for any repayments it makes, but may be able to claim a deduction for any interest payments it makes.
- You do not have to declare the repayments, but must declare any interest you receive from the company as assessable income.

Dividends

A company can pay a distribution of its profits to its shareholders, which is known as a dividend. Dividends may include a franking credit – which is the amount of tax already paid by the company and passed on to the shareholder. The company must issue a distribution statement to everyone who receives a distribution. It must show the amount of the franking credit attached to the distribution and the extent to which it's franked.

- The company may need to lodge a franking account tax return.
- You (the shareholder) must report dividends and any franking credits that you receive in your income tax return. You may have to pay income tax on the dividends you are paid.

For more information, see **ato.gov.au/dividends**

Loans from your company

A company can make a loan to a shareholder. However, to avoid tax consequences, before the company tax return is due or lodged (whichever comes first), the loan must either:

- be repaid, or
- comply with all of the following
- be a written agreement, signed and dated
- have an interest rate for each year that at least equals the benchmark interest rate for that particular year, and
- not exceed the maximum term of seven years (25 years in certain circumstances when the loan is secured by a registered mortgage over real property).

A loan that complies with all of these requirements is known as a 'complying loan':

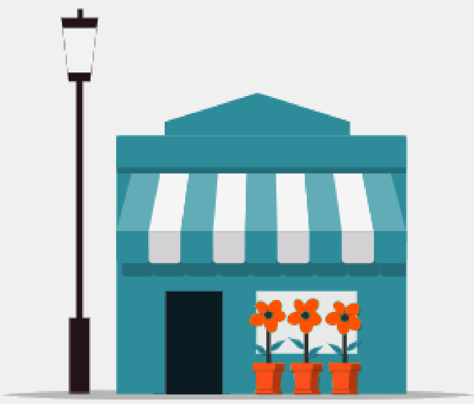
- The company must report any interest earned from the loan in their company tax return.
- You (the shareholder)
- must make a minimum yearly repayment each year (use the Division 7A calculator to determine this amount)
- cannot borrow further money from the company to make the minimum yearly repayment
- can make payments on the loan using a dividend from the company, as long as you report the dividend in your income tax return.

For more information about complying loans, see **ato.gov.au/Div7ALoans**

What happens if I use the company's money or assets in another way?

If you take money out of the company or use its assets for private purposes in a way not described above, an unfranked, deemed 'Division 7A' dividend can arise. This applies whether or not the company has banked the money (cash) before you use it.

- The company cannot claim a tax deduction for the dividend and cannot frank the dividend.
- You (shareholder or shareholder's associate) will have to declare the dividend as income on your individual tax return. You may have to pay income tax on the unfranked dividend.



To avoid unintentionally being in this situation:

- if you take money out of the company or use its assets, make sure you properly account for it as salary or wages, a fringe benefit, dividend, or complying loan before your company's lodgment date
- set up a separate bank account for your company, use it to pay for company expenses and don't use it to pay for your private expenses
- keep proper records to explain all of your company's transactions, including all income, payments and loans to and from shareholders and their associates
- repay any loans you take from the company or convert them into a complying loan before the company tax return is due or lodged (whichever comes first).

You can use the Division 7A calculator and decision tool to work out whether a payment your company has made will be treated as an unfranked dividend. The calculator also works out the minimum yearly repayment that must be made each year.

If you make an honest mistake when trying to comply with these obligations, you should tell us or your registered tax agent as soon as possible. There are ways you can get back on track without a penalty.

To find out more, see **ato.gov.au/Division7A**

ⓘ If you have a trust that distributes to a company, there could be Division 7A implications. Speak with your registered tax agent or find out more at ato.gov.au/Div7ATrusts

This is a general summary only

For more information, call Taxopia on 1300 829 674 or visit ato.gov.au/Division7A

Examples

Daphne

Daphne is the sole director of a company that provides administration services to other businesses. She and her partner Jo are equal shareholders in the company. Before this financial year, Daphne ran the business as a sole trader.

As a sole trader, Daphne paid herself $1,500 a month out of her business account and into her personal account. At the time she sets up the company, her tax agent explains to her that the company will now employ her as an employee and pay her $1,500 a month as a salary. The tax agent helps Daphne to set up pay as you go withholding and Single Touch Payroll reporting. Daphne reports the salary she receives in her personal income tax return.

Two years later, Daphne and Jo's daughter is about to start high school and they have to pay $2,000 in school fees. The business has had a few good years and Daphne decides that they should use the money from the business to pay for the fees.

However, Daphne knows that she cannot pay for a private expense using the company's money without properly accounting for it. As the director, she decides that the company will loan her and Jo the $2,000. She draws up a written loan agreement for the loan to be repaid over two years, with an interest rate equal to the benchmark interest rate. The loan agreement identifies the company, Daphne and Jo as the parties, and the repayment terms. It is signed by all parties.

The company loans Daphne and Jo the money, which they pay back to the company with interest each year according to the agreement over the next two years. When Daphne prepares the company's tax return, she declares the interest as income for the company.

Jian

Jian is the director and sole shareholder of a plumbing company. Jian decides to have his home repainted, which he pays for using his company's bank account.

Jian meets regularly with his bookkeeper, who notices the unusual transaction. The bookkeeper advises Jian that the transaction will be treated as a Division 7A dividend if he doesn't pay the money back or make it a complying loan before his next company tax return is due. Jian has enough money in his personal bank account, so he decides to repay the company the full amount. As he pays before the company's lodgment date, he doesn't have to pay any interest on the loan.

Jian also takes his bookkeeper's advice and makes sure he stops paying for his private expenses with the company bank account.

Sameera

Sameera is the sole director and shareholder of a small tourism company that runs tours and owns three coastal holiday houses. Sameera is also one of three employees of the company. Each employee of the company is given the opportunity to stay in one of the holiday houses for up to four weeks each year during the off-peak season. This year, Sameera and her family take up this offer and stay at their favourite holiday house for two weeks of their own holidays at no cost.

This is an employee's private use of one the company's business assets. The company is providing Sameera, in her capacity as an employee, with a fringe benefit. The company reports the fringe benefit in its FBT return and pays FBT on the benefit.

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