Basic Division 7A: UPE Checklist 2023

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This version of CPA Australia’s 2023 Division 7A UPE checklist is a basic checklist only.

For guidance on the key areas that public practice members should address to determine whether Subdivision EA of Division 7A applies, see CPA Australia’s [detailed checklist with tax agent instructions](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists).

This checklist is designed to deal with a situation where:

* a private company is owed entitlement UPE of the income of a trust estate
* the trustee of a trust estate that either directly or indirectly[[1]](#footnote-2) owes the present entitlement to the private company undertakes one or more of the following transactions in favour of a shareholder or an associate of a shareholder of the private company (except a shareholder or associate that is a company)[[2]](#footnote-3):
	+ a loan
	+ a payment or
	+ a debt forgiveness.

This checklist does not deal with UPEs formerly owed by a trust to a private company that have been subsequently discharged in that the entitlements have been converted into a loan. Refer to CPA Australia’s standard 2023 Division 7A Checklist in the [tax time year end resources](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists) these circumstances.

This information is based on legislation current as at 2 June 2023.

**PROPOSED AMENDMENTS TO DIVISION 7A**

Significant targeted changes to Division 7A were announced by the previous Federal Government, with a consultation paper being released by Treasury in October 2018. However, there have been successive deferrals to these announced reforms and, in the absence of draft legislation or meaningful detail, the scope and impact of such changes remains unclear, save for the commitment of the previous government that changes would be prospective commencing on or after the date of Royal Assent of the enabling legislation. Notwithstanding this, it is important to monitor any new changes to the rules as any new announcements in this regard are made.

**About the author**

This checklist was prepared by SW Accountants & Advisors on behalf of CPA Australia.

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| 1. Unpaid present entitlement and sub-trust arrangement | Yes | No |
| 1. **Was a private company owed a present entitlement to the income of a trust estate as at the earlier of the due date for lodgement and the actual date of lodgement of the trust’s tax return for the current year?**
 |  |  |
| If the answer is no, Subdivision EA does not apply to you. You have completed the checklist. If the answer is yes, continue to question 1b. |
| 1. **Did the UPE arise on or after 1 July 2022?**
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| If the answer is no, continue to question 1c. If the answer is yes, continue to question 2.  |
| 1. **Has the UPE been converted into an actual loan?**
 |  |  |
| If the answer is no, continue to question 1d.If the answer is yes, please proceed to CPA Australia’s standard 2023 Division 7A Checklist [tax time year end resources](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists). You have completed this checklist. |
| 1. **Was the UPE in existence before 16 December 2009?**
 |  |  |
| If the answer is no, continue to question 1e. If the answer is yes, continue to question 3. |
| 1. **Has the UPE been put on a sub-trust arrangement (by the required deadline) for the sole benefit of the private company beneficiary in compliance with PS LA 2010/4?**
 |  |  |
| If the answer is yes, continue to question 3.If the answer is no, the unpaid entitlement will have converted into a deemed loan and Subdivision EA does not apply to you. Please proceed to CPA Australia’s standard 2023 Division 7A Checklist [tax time year end resources](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists). You have completed this checklist.  |

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| 2. Did the private company provide financial accommodation where the trust entitlement remains unpaid, or the entitlement was held on sub-trust for the non-exclusive benefit of the private company?  | Yes | No |
| If the answer is yes, the private company will be deemed to have made a under section 109D of the general provisions of Division 7A which will potentially give rise to an unfranked dividend to the recipient of the deemed loan. Subdivision EA will not apply in these circumstances. Please proceed to CPA Australia’s standard 2023 Division 7A Checklist [tax time year end resources](https://www.cpaaustralia.com.au/tools-and-resources/taxation/tax-time-year-end-updates-and-resources/checklists). You have completed this checklist.If the answer is no, continue to question 3.  |  |  |

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| 3. Does the private company (which is owed the present entitlement) have a distributable surplus for the year of income? | Yes | No |
| If the answer is yes, Subdivision EA of Division 7A can potentially apply to transactions undertaken by a trust that directly owes the UPE to the private company, or to a transaction undertaken by another trust where there is an unbroken chain of UPEs owing through another trust to the private company . Continue to question 4.If the answer is no, Subdivision EA of 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. You have completed this checklist. |  |  |

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| 4. Did the trustee of the trust make a loan (either directly or indirectly) to a shareholder, or an associate of a shareholder, of the private company (except a shareholder or associate that is a company)? | Yes | No |
| If the answer is no, continue to question 6. If the answer is yes, continue to question 5. |  |  |

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| 5. Did the trustee and the shareholder, or shareholder’s associate, place the loan on excluded terms 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? | Yes | No |
| If the answer is yes, Subdivision EA should not be applicable to the loan. However, the shareholder or associate should ensure that minimum yearly repayments are made in subsequent years. You have completed this checklist.If the answer is no, the private company may be deemed to have paid a deemed unfranked dividend to the shareholder (or associate of a shareholder) of the private company, subject to a cap equal to the distributable surplus of the private company. Continue to question 6. |  |  |

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| 6. Payments by a trust with a UPE owing to a private company (either directly or indirectly) to a shareholder, or an associate of a shareholder, of the private company. | Yes | No |
| 1. **Did the trustee make a payment to a shareholder, or an associate of a shareholder (either directly or indirectly), of a private company (except a shareholder or associate that is a company) during the current year, other than a loan? (Refer to section 109XA(1))**
 |  |  |
| If the answer is no, continue to question 8. If the answer is yes, continue to question 6b.  |
| 1. **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 gain in the trust?**
 |  |  |
| If the answer is no, continue to question 7. If the answer is yes, the private company may be deemed to have paid an unfranked dividend to the shareholder (or associate or a shareholder) of the private company capped to the distributable surplus of the private company and continue to question 7. |

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| 7. Trusts with a UPE owing to a private company (either directly or indirectly) that forgive a debt in favour of a shareholder, or an associate of a shareholder, of the private company. | Yes | No |
| 1. **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? (Refer to section 109XA(3))**
 |  |  |
| If the answer is no, you have completed the checklist. If the answer is yes, continue to question 7b. |
| 1. **Has the loan that was forgiven been included in the assessable income of the shareholder or associate of shareholder under Subdivision EA in the current or an earlier year of income?**
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| If the answer is no, continue to question 8.If the answer is yes, Subdivision EA should not be applicable to the debt forgiveness. You have completed the checklist. |

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| **8. Has the debt been forgiven under the Bankruptcy Act?** | **Yes** | **No** |
| If the answer is no, continue to question 9.If the answer is yes, Subdivision EA should not be applicable to the debt forgiveness. You have completed the checklist. |  |  |

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| **9. Has the Commissioner made (or will make) a determination that the debt forgiven will not give rise to a deemed dividend?** | **Yes** | **No** |
| If the answer is no, continue to question 11.If the answer is yes, Subdivision EA should not be applicable to the debt forgiveness. You have completed the checklist. |  |  |

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| **10. Has the debt forgiveness arisen because of the rule that deems a debt to be forgiven under a statute of limitations and relates to a pre-Division 7A loan?** | **Yes** | **No** |
| If the answer is no, the private company may be deemed to have paid an unfranked dividend to the shareholder (or associate of a shareholder) of the private company, capped to the distributable surplus of the private company.If the answer is yes, Subdivision EA should not be applicable to the debt forgiveness. You have completed the checklist. |  |  |
| **You have completed the checklist.** |

1. An indirect UPE owing to a private company would encompass a situation where there are UPEs owing via a chain of trusts to a private company. For example, Trust A has a UPE owing to Trust B, which has a UPE owing to Private Company C. Rules in Division 7A deem Trust A in effect to have a UPE owing to Private Company C [↑](#footnote-ref-2)
2. Division 7A also contains complex integrity rules to ensure that payments, loans and debt forgiveness through an interposed entity are also potentially caught as deemed dividends [↑](#footnote-ref-3)