

# Senate Economics Legislation Committee

Tax Laws Amendment (2010 Measures No. 2) Bill 2010

Public Hearing

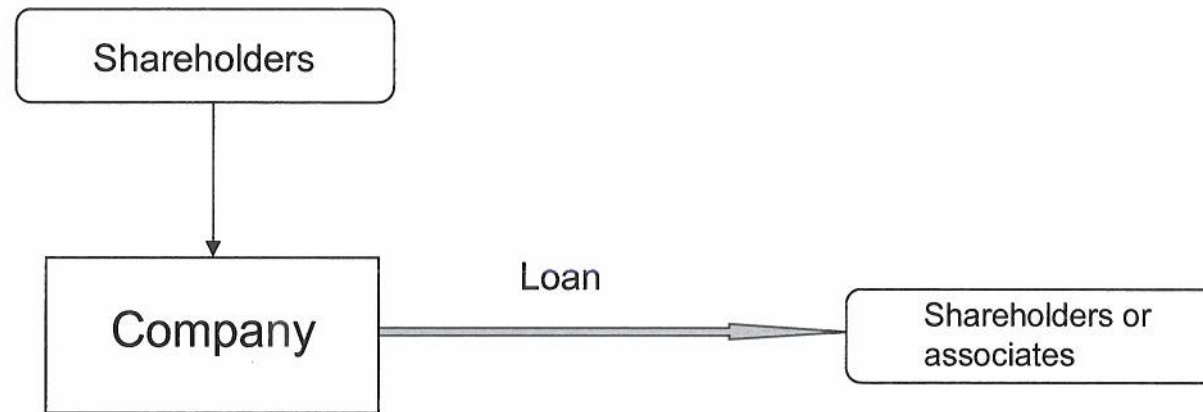
Evidence from Peter Riley of Pitcher Partners Advisors

29 April 2010

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*Tabled 29/4/10, TLAB 2.*

# Division 7A Conceptually



Outcome: Amount of loan taxed as a dividend unless placed on commercial Principal and Interest terms.

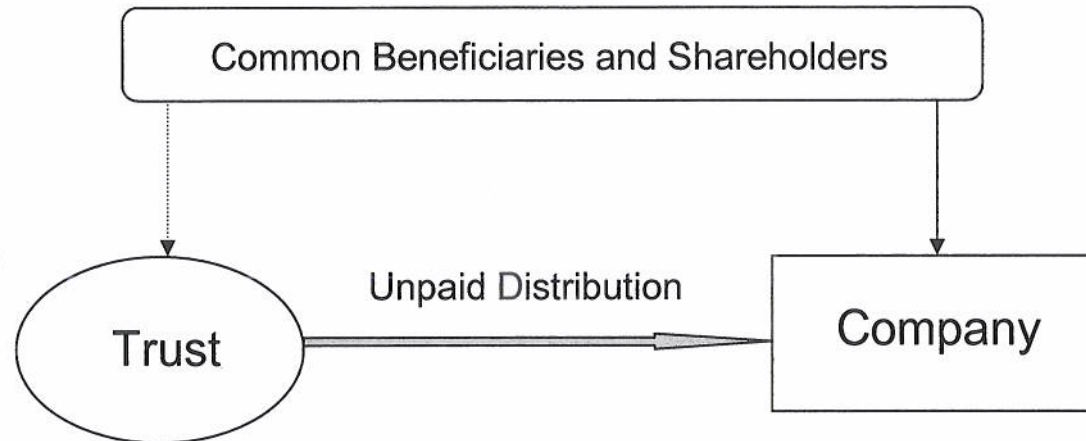
Do not object to the inherent policy.

Troubled that the provisions:

Do not distinguish between loans for business and private purposes; and

Will be approximately 38 pages of complex legislation.

# History



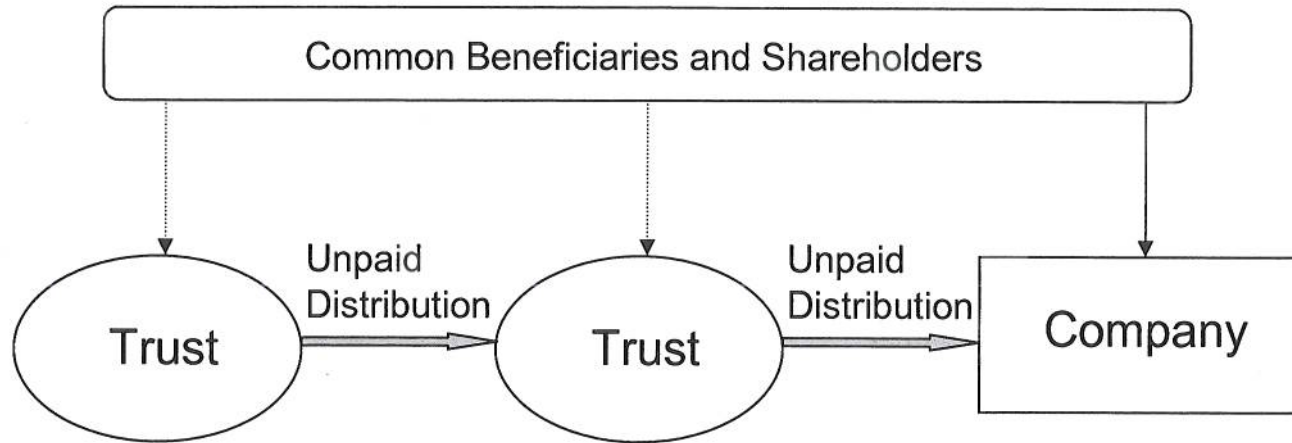
## Technically:

- Unpaid distribution creates a trust relationship; and
- Not a loan as commonly understood.

## History:

- 1997: Division 7A operative with “loan” expansively defined;
- 1998: A provision was introduced specifically to apply where a trust made a loan;
- 2002: Extensive new provisions were introduced to:
  - remedy anomalies; and
  - extend principles to payments and debt forgiveness by trusts.

# Schedule 1



Schedule 1 to this Bill (50% of amendments and >25% of Division 7A) adds further provisions to broaden the circumstances in which the existing provisions can apply.

Particularly allowing for circumstances where entities are interposed between a trust and a company.

# ATO Interpretation of Existing Provisions

- Until March 2009 had consistently expressed the view that an unpaid distribution was not a loan as expansively defined;
- ATO releases draft ruling (TR 2009/D8);
  - Effect:
    - Rare that an unpaid distribution has not always been a loan as expansively defined for the purposes of Division 7A.
    - Present indications are that this position will be maintained in the final ruling.
- ATO National tax Liaison Group commentary in March 2010:
  - 3 'remote' (at best) examples of where the provisions have application;
  - Have never seen any of these example in practice;
- Confident that an inquiry of other professionals, the ATO and Treasury would confirm that accepting the tenor of the draft ruling it would be at best rare that the provisions have application.

# Question for the Committee

- Is it intended that 50% of the amendments in Schedule 1 to this Bill (and consequently >25% of Division 7A) is directed to a set of circumstances that are 'at best' rare?



# Submission

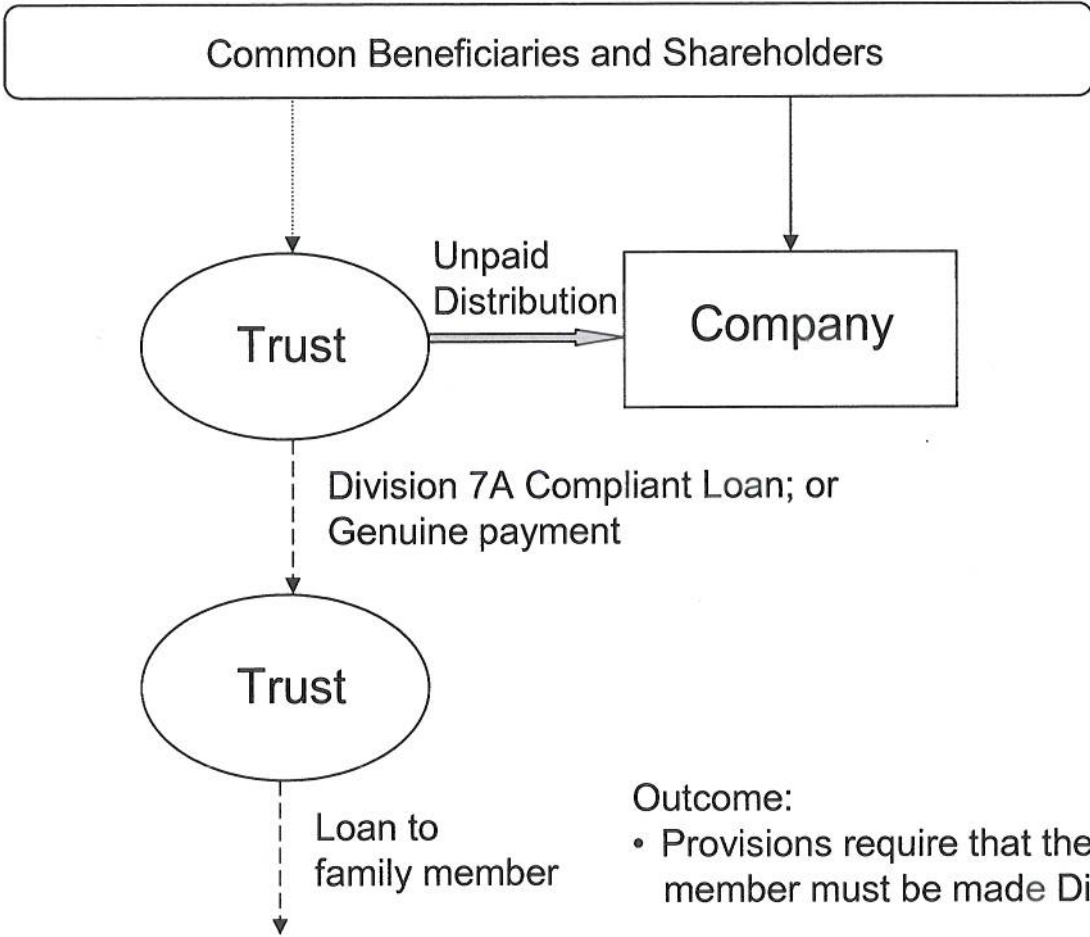
- We submit that:
  - this is improbable; and
  - the current provisions have been drafted on the premise that an unpaid distribution is not a loan as defined.
- Recommendation to ensure that the current and proposed provisions operate with **very substantial impact**:
  - a legislative amendment is required to make it clear that an unpaid distribution is not a loan as defined; and
  - This amendment should have retrospective effect to the commencement of Division 7A.

# Submission

- Our detailed written submissions raise many other points that are consequent upon the adoption of our recommendation.
- We commend them for the Committee's consideration.



# Compliance Simplification



Outcome:

- Provisions require that the loan to the family member must be made Division 7A Compliant.
- Unnecessary compliance.



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