

Welcome to the new financial year! We thought that this would be a good opportunity for us to update our corporate clients on new developments in tax legislation, compliance issues and various changes to our firm. Please take some time to read through this newsletter, as these issues will undoubtedly concern you and your business.

In this newsletter, we will be covering the following topics:

- **New legislation regarding withdrawing money from your company** (Page 1)
- **Superannuation obligations for employers and contributions caps** (Page 3)
- **Due dates for BAS lodgement & payment, and how 'failure to lodge' penalties apply** (Page 5)
- **Due date for end of financial year company tax and when you should send your materials to our office** (Page 6)
- **Payment summaries for your employees – what you need to do** (Page 7)
- **ASIC Annual Fee and how to report changes to your company details** (Page 7)
- **Individual tax rates and the new (temporary) flood and cyclone reconstruction levy (known as the "flood levy")** (Page 8)
- **Changes in our firm, including new office address in Bondi Junction** (Page 8)

BORROWING MONEY FROM YOUR COMPANY – DIVISION 7A

“Division 7A of Part III of the *Income Tax Assessment Act 1936* (ITAA 1936) is an integrity measure aimed at preventing private companies from making tax-free distributions of profits to shareholders (or their associates).” – [ATO](#)

In plain terms, if you have taken funds out of your company, over and above those amounts owing to you as net salaries reported or any sort of reimbursement for expenses you incurred on behalf of your company (e.g. you have taken money from the company to put against your personal home loan), *Division 7A* provides that these funds be treated as assessable income (by way of dividend) in your personal tax return.

“The dividend is taken to be paid out of the private company's profits to the recipient as a shareholder in the private company.” – [ATO](#)

Division 7A treats three kinds of amounts as dividends paid by a private company:

- amounts paid by the company to a shareholder or shareholder's associate (section 109C)
- amounts lent by the company to a shareholder or shareholder's associate (sections 109D and 109E), and
- amounts of debts owed by a shareholder or shareholder's associate to the company that the company forgives (section 109F).

If you are concerned that you might have taken out funds from the company and have not paid those funds back, please send us an email – we will check your latest financial statements, and let you know if there is a chance that you have taken undistributed profits from your company.

What happens when you have taken funds from the company that fall under the Division 7A rules?

If the company made an unsecured loan to a shareholder or associate of the company, and the loan was made under a written agreement which specified that the rate of interest payable for all future years must equal or exceed that required by the ATO under sections 109N(1)(b) of the *Income Tax Assessment Act 1936* (for 2011 financial year, the rate required by the Act is 7.4% per annum), then the loan is not treated as a dividend under Division 7A.

The loan agreement must specify the term of the loan (7 years maximum) and the minimum yearly repayments (based on an ATO-supplied formula). The loan amount cannot increase during this time.

What if there is no written loan agreement and the funds cannot be repaid?

If this is the case, then the funds would be treated as a paid dividend to the associate or shareholder under Division 7A. However, we can help you to meet legislative requirements with regard to putting together a loan agreement.

The following is an example of a situation where Division 7A comes into effect for a company:

John Smith's company is not registered for GST. His company had sales of \$70,000 in the 2011 financial year. He had company expenses, including wages of \$50,000. His profit was therefore \$20,000. The company was not owing any money to John. He decided to go on a holiday which cost him \$5000, and he paid for this with company funds. He also used the company accounts to pay for entertainment such as movies and gifts for his friends. He spent \$1000 in total on these items. He also transferred \$4000 from

the company to his personal home loan to save interest on his mortgage.

Therefore, John may be in violation of Division 7A by having taken \$10000 from the company for non-business purposes.

There are a few things John can do:

1. He can declare this amount as extra wages to himself. However, he may have to pay late super penalties.
2. He can declare that this amount was paid to himself as a franked dividend. This is only possible if the company had paid enough tax in the past to cover a "franked" dividend. If this is the case his personal income will be increased, but a franking credit will reduce the tax he has to pay on this extra income.
3. He can declare that this amount is a loan from the company. However, John will need a written loan agreement, as explained above. He will also have to pay back this loan over a period of not more than 7 years.
4. He can ensure that the \$10,000 is paid back before the earlier of either the company's tax return lodgement due date, or the date on which the company lodges its tax return (if it is lodged before the due date). However, he must not re-borrow this money or even a similar amount. If he re-borrows this money after the repayment, in a way that a reasonable person would conclude that he never intended to actually repay the debt, he will not meet this condition.
5. If he doesn't meet any of the above 4 conditions, the \$10,000 will be treated as an unfranked dividend. This means that:
 - a. The company will pay tax on this \$10,000

- b. John's income will increase by \$10,000 which means that he will probably pay tax on it as well.
- c. This is therefore the worst possible outcome.

You can send your questions regarding Division 7A to dorin@sjb-accounting.com.au with the subject heading "DIVISION 7A" or if you require more information.

You can also read about Division 7A here:

Division 7A - answers to frequently asked questions:

<http://www.ato.gov.au/businesses/content.aspx?doc=/content/32059.htm>

SUPERANNUATION GUARANTEE OBLIGATIONS

Paying Superannuation is compulsory for all employers whose staff (aged between 18 and 69 inclusive), receive \$450 or more per calendar month of ordinary time earnings. This includes:

- ordinary hours worked
- over-award payments
- commissions
- shift-loading
- allowances
- bonuses

Ordinary time earnings (OTE) are further explained on the ATO website (you can also view their checklist to work out the superannuation guarantee):

<http://www.ato.gov.au/super/content.aspx?doc=/content/39205.htm>

You must pay Superannuation to your employees, even if the employee is yourself, your spouse, or other family members and associates.

How Much to Pay

To work out the amount to pay, you simply multiply the amount of OTE by 9%. This superannuation amount needs to be paid in addition to wages, and must be paid into a complying superannuation fund or retirement savings account.

When to Pay

Superannuation is paid on a quarterly or monthly basis. It is extremely important to ensure that you pay on time, otherwise the consequences include hefty ATO-imposed penalties, as well as non-tax deductibility of superannuation payments. The following table outlines the payment due dates:

Quarter	Period	Payment Due
1 st	1 Jul – 30 Sep	28 October
2 nd	1 Oct – 31 Dec	28 January
3 rd	1 Jan – 31 Mar	28 April
4 th	1 Apr – 30 Jun	28 July

What if You Don't Meet Your Super Obligations?

If you don't meet one of the following obligations, then you need to lodge a Superannuation Guarantee Charge Statement (we can provide this service for you if necessary).

You have not met your Super obligations if you:

- don't pay enough super contributions (at least 9% of ordinary time earnings) for your employee - this is called a super guarantee shortfall
- don't pay super contributions by the quarterly cut-off date for payment
- don't pay super to your employee's chosen super fund - this is called a choice liability.

If you feel that there is a chance you have not met your superannuation obligations, please

email us or discuss with Joel at your next meeting.

SUPERANNUATION CONTRIBUTIONS CAP

There are generally 2 types of superannuation contributions that you can make. The first is a concessional contribution (which includes the employer superannuation guarantee – i.e. the 9% compulsory superannuation discussed above, as well as salary sacrificed amounts and voluntary deductible contributions); and there are non-concessional contributions (which include contributions you make from your post-tax earnings, and for which you are not claiming a deduction). Accordingly, there are different limits to how much superannuation you can contribute into your fund for each type of contribution.

Concessional Contributions

These contributions are included in the assessable income of your Superfund and are taxed at 15% by the Superfund. They include:

- your employer's contributions under the super guarantee
- any additional contributions your employer makes on your behalf (i.e. as part of a salary sacrifice) up to the concessional cap
- any additional contribution you make from pre-tax earnings for which you want to claim a deduction in your tax return (if your income from wages is 10% or less).

The maximum (cap) you can put into your Superfund as a concessional contribution for 2010, 2011 and 2012 financial years is \$25,000 for individuals under 50 years of age, and \$50,000 for individuals 50 years of age or over.

Any concessional contributions made that exceed the cap will be taxed at 31.5%, added to the 15% that the Superfund will pay (the tax is payable by

the individual, but you can request for your Superfund to release money from the fund to cover this tax).

Non-Concessional Contributions

These contributions are not included in your Superfund's assessable income, so no tax is payable on them in the Superfund. They include contributions that you make from:

- your take-home (or after-tax) pay for which you haven't claimed a personal super deduction in your income tax return
- any other savings you have (e.g. profits from your business or from selling an asset)

They also include:

- contributions made on your behalf by your spouse (unless they are doing so as your employer)
- if you're under 18, contributions made on your behalf by any other (non-employer) third party, such as a friend or relative
- contributions in excess of your concessional contributions cap for the year

The maximum (cap) you can put into your Superfund as a non-concessional contribution for 2011 is \$150,000. If you are under 65 years old for at least 1 day in the financial year, you can "bring forward" two years' worth of contributions, bringing your total contributions to \$450,000 for 3 years (rather than making contributions of \$150,000 per year for 3 years).

Any non-concessional contributions made that exceed the cap will be taxed at 46.5% (the tax is payable by the individual, but you can request for your Superfund to release money from the fund to cover this tax).

For more information about superannuation guarantee charge, or concessional and non-concessional contributions, follow these links:

What Employers Need to Know:

<http://www.ato.gov.au/content/downloads/SPRO0108513n71038.pdf>

Super contributions - too much super can mean extra tax

<http://www.ato.gov.au/individuals/content.aspx?doc=/content/00106372.htm>

BUSINESS ACTIVITY STATEMENTS

There has been some confusion lately amongst some of our clients regarding due dates for BAS lodgement and payment, and various penalties.

The following table outlines the due dates for both lodgement AND payment of your BAS and IAS. Please note: the Annual BAS is due at the time that your business return is lodged (this applies for all business entities).

Activity Statement	Period Covered	Due Date
Jul IAS	1 st Jul – 31 st Jul	21 st Aug
Aug IAS	1 st Aug – 30 th Aug	21 st Sep
Sep BAS	1 st Jul – 30 th Sep	28 th Oct
Oct IAS	1 st Oct – 31 st Oct	21 st Nov
Nov IAS	1 st Nov – 30 th Nov	21 st Dec
Dec BAS	1 st Oct – 31 st Dec	28 th Feb
Jan IAS	1 st Jan – 31 st Jan	21 st Feb
Feb IAS	1 st Feb – 28 th Feb	21 st Mar
Mar BAS	1 st Jan – 31 st Mar	28 th Apr
Apr IAS	1 st Apr – 30 th Apr	21 st May
May IAS	1 st May – 31 st May	21 st Jun
Jun BAS	1 st Apr – 30 th Jun	28 th Jul

We can apply for an extension to lodge your BAS after the due date, however extensions are not always granted. If we receive your BAS materials (either completed or to prepare) after the due

date, you will not be granted an extension by the ATO.

Furthermore, if you send us your BAS documents to prepare just before the due date, we can't guarantee that we will have enough time to prepare it and/or apply for an extension. Therefore, it is very important to make sure to send us your materials well before the due date (or make an appointment to do your BAS before the due date).

The following summary outlines the way in which late lodgement penalties apply:

FTL penalty amount according to entity size			
Days overdue	Small	Medium	Large
28 days or less	\$110	\$220	\$550
29 to 56 days	\$220	\$440	\$1,100
57 to 84 days	\$330	\$660	\$1,650
85 to 112 days	\$440	\$880	\$2,200
113 days or more	\$550	\$1,100	\$2,750

Source: ATO - Last Modified: 7th June 2010

Please note – the Failure to Lodge (FTL) penalties apply to any “approved form” such as an:

- activity statement (IAS and BAS)
- income tax return
- fringe benefits tax return
- pay as you go (PAYG) withholding annual report
- annual goods and services tax (GST) return, or
- annual GST Information report

FTL penalties will apply when the form is required to be lodged with the Tax Office by a due date and is not received by that due date.

COMPANY TAX RETURNS – 2011 F/Y

The due date for lodging a company tax return is not necessarily the same for all companies. The due date depends on a number of factors, some of which include the date of incorporation (i.e. new companies) and whether your previous tax return was lodged on time.

The following table outlines the due dates for company tax returns for the year ending 30th June 2011. Previous returns are now already overdue.

Due Date	Applies to
31 st October 2011	Company and superannuation funds where one or more prior-year returns were outstanding, as at 30 June 2010.
28 th February 2012	Income tax return lodgement and payment due date for large/medium entities and self-managed superannuation funds (taxable and non-taxable) that are new registrations.

For all other companies – the due date is currently “unknown” according to the tax agent portal. If you haven’t had outstanding returns in the past, it is most likely that your company tax return is due around mid-May. If you want to know the due date of your company return, the fastest way to find out is to call the **ATO hotline** on **13 28 61** (make sure you have your company’s TFN available). Alternatively, you can send an email to joel@sjb-accounting.com.au and ask us to look at your company’s due date on the “tax agent portal”.

When should you send your materials?

The sooner the better! If you leave it too late, we can’t guarantee that you will have the return done on time. Some companies are eligible for an extension until 30th June 2012, but this depends greatly on individual company circumstances as well as the discretion of the ATO officer processing the request at the time. It’s best if you send us your documents as soon as you have everything ready. For an extensive list of what you need to send us, you can visit the F.A.Q. section of our website:

www.sjb-accounting.com.au

How long will it take to prepare the tax return?

We often have pockets of time where we receive a large volume of client materials at once, and it makes the processing time longer than usual.

We can usually prepare financials within 3-4 weeks from the date of receipt of the documents if we don’t require any additional information. Under special circumstances, we can prepare financials within 2 weeks (e.g. if a client needs to apply for finance for a loan).

If we receive documents just prior to our annual close-down (any time between start of November and end of December), or in the last couple of months of the financial year, it may take up to 8 weeks for the materials to be finalised. This is due solely to the fact that there is too large a volume to process at once. That is why it is best to get in early.

You can post all your documents to us at **PO Box 570, St Leonards NSW 1590** or you can email the documents to joel@sjb-accounting.com.au. Delivering your documents to our office in person is also fine, but please be aware of our office opening times (they are different depending on the office location).

Lastly, if you want us to prepare your Q4 BAS at the same time as your 2011 financial statements and tax return, we would be more than happy to do this. Just send us your BAS materials together with end-of-year documents, and remember to send it well before the Q4 BAS due date, or ask us to apply for an extension for your BAS.

PAYG PAYMENT SUMMARY ANNUAL REPORT

If your company is registered for PAYG Withholding tax, then you have probably received a stack of forms in the mail from the ATO, including your PAYG Payment Summary Annual Report (previous called the "Payment Summary Statement), and a number of PAYG Payment Summaries (also known as "Group Certificates").

If your company is a not a closely-held entity (i.e. you employ external employees, who are not directors or shareholder or associates of your company), then you must fill out these forms, provide a copy to your employees by 14th July, and lodge the ATO copy by 14th August.

If your company is a closely-held entity (no external employees, shareholders and directors are the only employees of the company etc), then you do not need to fill out these forms. You can just send them to our office together with the rest of your documents when you want us to prepare your company tax return. If you are emailing your documents through to us, then you can just discard the PAYG forms, as we have plenty of spares in our office.

For closely-held entities, the forms are due for lodgement at the same time as the company tax return (see due dates for company tax above). If you send us your materials (and PAYG forms) too late, then you might receive a late lodgement penalty for the company tax return, as well as a FTL penalty for lodging the PAYG Withholding Payment Summary Annual Report after the due date.

ASIC ANNUAL STATEMENT & ANNUAL FEE

Every year you will receive an ASIC annual statement which is issued on your Company's date of incorporation. The annual statement includes a summary of all of the details that ASIC has in their database relating to your company, including the registered and business address, directors' & shareholders' names and addresses, and the share structure of the company.

We download these statements directly and send them to our clients (either by email or post). There are some occasions where we don't receive the statements from ASIC, so you need to check your incorporation date (it is shown on your company's certificate of incorporation), and if you can see that you have not received a statement but it seems that you should have, please contact our office ASAP so we can look into the matter.

What do you need this statement for?

The main reason ASIC sends this statement out is to make sure all the details in their database relating to your company is correct and current. If any changes need to be made, you need to inform us ASAP so that we can prepare & lodge the necessary forms for you. You shouldn't wait to receive the annual statement in order to inform us of any changes. If you change your address, your name, or business location, you need to inform ASIC. We manage ASIC compliance for our corporate clients so simply inform us of any changes to your details and we will inform ASIC on your behalf, using the required forms.

What about the ASIC Annual Fee?

The annual fee is currently \$218 and is payable between the date of incorporation and 2 months from that date. If you do not pay it on time, you

will be heavily penalised. So make sure you do it as soon as you receive the ASIC invoice from us.

INDIVIDUAL TAX RATES & THE FLOOD LEVY

If you have external employees or you want to work out the tax to withhold for your company's associated employees (i.e. yourself, your spouse etc), there are new tax tables available on the ATO website, as well as a tax calculator that you can download here:

<http://www.ato.gov.au/businesses/content.aspx?doc=/content/00279698.htm>

Alternatively, you can search on Google for "ATO Tax Tables" and the first link should take you to the right place on the ATO's website. Always make sure when using tax tables, that you are looking at the correct payment frequency (e.g. weekly, fortnightly, monthly etc) and the correct financial year.

For 2012, the tax brackets and tax rates are the same as the previous financial year (2011). However, the new tables now incorporate the temporary flood and cyclone reconstruction levy (known as the "flood levy"). The levy is applied as follows:

Taxable Income	Flood levy on this income
\$0 to \$50,000	Nil
\$50,001 to \$100,000	Half a cent for each \$1 over \$50,000
Over \$100,000	\$250 plus 1c for each \$1 over \$100,000

The flood levy is already incorporated into the tax tables, so if you are using tax tables, you don't need to manually apply the flood levy.

Please note: As there are 27 fortnights in this financial year (2012), if you have external employees, you should inform them that the tax withheld on their salaries might just be short of

the required amount for this financial year (since the tax tables are based on financial years with 26 fortnights).

CHANGES IN OUR FIRM & NEW ADDRESS

Administration

We were very sorry to say goodbye to our wonderful secretary Stephanie, who left our firm in March this year. Since then, we have not been able to find a suitable replacement, and this has caused some administration backlogs in our firm. We appreciate that this has caused some of our clients a great deal of inconvenience, and we are working to change some of our internal systems in order to provide a better administrative service to our clients.

We will shortly be employing 2 receptionists to fill the role that used to be held by 1 secretary. We feel that this will allow our clients easier access to our administration and accounting personnel. We appreciate your patience and understanding during this transitional period.

Change of Location - Bondi Junction Office

Our Bondi Junction office has moved to another floor in the same building. We are still located at 9-13 Bronte Rd, Bondi Junction, but instead of level 2, Joel is now located on Level 5, Suite 2.

Joel is available in Bondi Junction on Mondays during business hours. Please also note, that we no longer use our Bondi Junction postal address, so please send all correspondence to **PO Box 570, St Leonards NSW 1590**. Lastly, all of our phone lines are re-directed to our St Leonards office, so if you need to leave a message for Joel, you should call our main line: (02) 9901 4711

Dorin Bentley – 2011 Availability

Dorin will be on maternity leave from around mid-September until the end of October, after which she will be available part time via email until our annual close-down in December. She will be back in the office on a full time basis once business resumes in January 2012. In her absence, you can send enquiries to: sam@sjb-accounting.com.au.

Questions for Joel, Sam and Dorin Bentley

Please note – if you have a question which relates to the ordinary operation of your business (e.g. tax deductibility of certain expenses, whether to purchase a car on finance or lease, how much super to pay, etc), it might be more convenient for you to send us an email instead of calling our office.

If you do call our office with more complicated questions, we might ask you to send as an email in any case, as with any sort of business or tax advice, we want to keep a paper trail in order to meet professional guidelines. You should receive a response within 24-48 hours depending on how busy we are, but for very simple and/or urgent questions, you might receive a response within the same business day.

For advice not relating to your business (e.g. self-managed super funds, negative gearing, family trusts etc), you may need to book in for a consultation with Joel. You can still send in your questions to us by email, and we will let you know if this is a matter that you need a consultation for. For financial planning advice, we can refer you to our financial planner.

Website

We regularly update our website with important information and announcements. Please bookmark our site to keep updated with important news:
<http://www.sjb-accounting.com.au>

For your convenience, below is a list of our contact details and office locations

Correspondence – PO Box 570, St Leonards NSW 1590

St Leonards Office – Suite 12, Level 3, 30 Atchison St

Bondi Junction Office – Suite 2, Level 5, 9 Bronte Rd

Kariong Office – 2/33 Carmel Cres (side driveway)

Phone: (02) 9901 4711 **Fax:** (02) 9901 4811

Email Addresses:

Joel Bentley: joel@sjb-accounting.com.au

Samuel Bentley: sam@sjb-accounting.com.au

Dorin Bentley: dorin@sjb-accounting.com.au

Office Hours

St Leonards – Open Monday to Friday between 9am and 5pm. You can drop off materials any time during these hours. Joel is available for appointments on Tuesdays and Thursdays in St Leonards. Dorin is available for appointments on Mondays, Wednesdays and Fridays.

Bondi Junction – Open on Monday only between 9am and 5pm. Please call ahead before dropping off materials. Joel is available for appointments on Mondays only.

Kariong – Open on Wednesdays and Fridays between 9am and 5pm. Please call ahead before dropping off materials, or to enquire about Joel's and Sam's availability.