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# Intercompany loan agreement template australia

An inter-company loan agreement allows two child entities to borrow and loan funds from each other that have the same parent company. The loans are usually favorable to one-side in order to help with cash reserves or help make an investment whereas the other child entity lacks the finances to do. [fbcomments] LOAN AGREEMENTAcknowledgement of Debt. 1. PartiesThis Loan Agreement is made between: Full Name (ABN or ACN) of Address , ("the Borrower"), and Full Name (ABN or ACN) of Address ("the Lender"), together know as the "Parties". 2. Date of AgreementThis Agreement is effective Effective Date. 3. Period of Loan: This loan shall endure for a period of 3 months calculated from the Date of Agreement 3. Loan Amount: The Borrower promises to pay to the Lender \$10,000 and Interest as well as other charges outlined below. Interest: The Borrower shall be obliged to pay interest at the rate of 12 percent (%) per annum, the "Interest", such interest to be paid together with the capital sum of the loan at the end of the loan period. Or The Borrower shall be obliged to pay the Interest Rate in equal monthly instalments of percent 1 (%) on the first day of each month. 5. Prepayment: The Borrower shall be entitled to pay larger instalments than prescribed or the full balance of capital and interest at any time prior to the prescribed dates of payment. In any such event interest shall be calculated up to the date of payment. 6. Late Charge: Any payment not remunerated within 10 days of its due date shall be subject to a belatedly charge of 5 percent (%) of the payment, not to exceed \$500 for any such late installment. 7. Default: If Borrower has not paid the full amount of the loan when the final payment is due, the Lender will charge Borrower interest on the unpaid balance at 20 percent (%) per year. 8. Collection fees: If this note is placed with a legal representative for collection, then Borrower agrees to pay an attorney's fee of ten percent (10%) of the voluntary balance. This fee will be added to the unpaid balance of the loan. 9. Insolvency:The full balance of the capital and interest shall become payable immediately if the Borrower becomes insolvent. 10. Severance. Any provision of this Deed that is invalid or unenforceable will be read down where possible so as to be valid and enforceable, or, if that is not possible, will be severed from this Agreement to the extent of its invalidity of unenforceability, without affecting the remaining provisions, which will remain binding on the Parties. 11. Dispute Resolution.Where any dispute arises among the Parties as to the performance or interpretation of this Deed, the Parties will resolve the dispute in the following manner: First, the Party raising the dispute must notify immediately the other Party of the dispute, providing a reasonable amount of information about the nature of the dispute. Second, the Parties will meet as soon as possible, in person or by video conferencing, and attempt to resolve the dispute by discussion. Third, if such negotiation fails, the Parties will refer the dispute to a mutually acceptable mediator, as soon as possible, to be resolved in accordance with an accepted code of mediation practice, and if they are unable to agree on a mediator then a relevant officer of the Institute of Mediators and Arbitrators Australia or a similar body must be requested to select a mediator for the Parties. Fourth, except for urgent injunctions, only after steps (1) to (3) have been followed may a Party resort to litigation. 12. Currency:Any reference to "dollars" or "\$" is a reference to the lawful currency of the Commonwealth of Australia (AUD), unless otherwise specified. 13. Costs:The Borrower shall be liable for the costs, if any, in respect of the drafting and execution of this contact. 14. Payments:All payments due from the Borrower to the Lender under this Agreement will be made by direct deposit to the following bank account: Account Name: Lender's Account Name Financial Institution: Lender's Bank Name BSB Number: Lender's BSB No. Account Number: Lender's Acc No. 15. Entire Agreement:The parties confirm that this contract contains the full terms of their agreement and that no addition to or variation of the contract shall be of any force and effect unless done in writing and signed by both parties. ExecutionExecuted by both Parties on Date of Execution. \_\_\_\_\_ Lender \_\_\_\_\_ Borrower Harris Gomez Group has been assisting companies enter the Chilean and the Latin American region for over 10 years. On many occasions, we work with clients from their initial set up, helping their management teams understand the various differences in the way things are done in Chile. Once a company is legally established and bank accounts are opened, most companies start thinking about bringing money into Chile in order to fund the purchase of equipment, office space and employees. One of the areas that we work with clients quite closely is in using inter-company loans as a tool to fund the new operation. Inter company loan agreements are a standard tool across the world with small variations depending on the legal and accounting system used in the respected country. In general, the issue with inter company loans and taxes is that while the company may consider it a loan, government agencies may view it as an equity investment. If it is an investment, it must be treated differently by the recipient, and creates a complicated tax situation. Inter company loans must be conducted at arm's length with a clear loan agreement to demonstrate that it is a loan within the company, not a movement or investment of capital, and the borrower has an obligation to repay it at set terms. Below we have highlighted some of the points one must take into consideration before executing an inter company loan agreement for a Chilean subsidiary. Loan Contract Harris Gomez Group highly recommends to reinforce the transaction with a written contract between the parties. In addition the relevant taxes must be paid (even without a formal written contract in place). In our opinion, from a legal perspective a "mutuo" or loan of money or loan of consumption would be the best contract to set up between these companies, although promissory notes are also a valid alternative. The mutuo has the advantage that the parties may agree on further details related to the terms and conditions of the loan, the time when the loan will be paid back, instalments of payments, interest, guaranties, etc. Stamp Duty Tax The above loan contract is necessary to establish the taxes to be paid. In an operation of this kind (and even without the written document) the debtor or borrower will have to pay stamp tax duty. Generally speaking, documented loans and undocumented foreign loans are subject to stamp tax duty at a 0,033% of their value for each month (or fraction of month) between disbursement and maturity, with a cap of 0,4% (0,033 \*12), therefore, loans to be paid over a year period of time are levied with this maximum rate. This tax is imposed on the loan principal indicated in the document (interest are levied apart). For loans with no maturity date payable on-demand, the tax increases up to 0,166%. The renewal of a loan may be exempt from stamp duty if certain requirements are met. Please note that the above are the current rates, however they are going to be increased due to the recent Tax Reform, rising from 0,033% to 0,066% (caped at 0,8%) and from 0,166% to 0,332%. These new rates will be in force on the 1st of January of 2016. Consequently, Harris Gomez Group recommends a loan (for consumption) what here in Chile is known as "mutuo" documented before the end of year 2016, before a Notary Public that will be in charge of withholding the stamp tax duty. The tax to levy the operation will depend on the manner and period the loan shall be paid, according to the tax rates indicated above. Withholding Tax and Thin Capitalization Rules In regard to the withholding tax ("WHT" or "Impuesto Adicional") the loan itself is not subject to WHT, since it is not considered profit repatriation by Chilean legislation, however, all interest or commissions related to the loan is subject to a tax rate of 35% that may be reduced to 4% in some cases, for example interest deriving from foreign loans granted by foreign banks. If the beneficial owner of the interest is resident of a country with which Chile has a Treaty to Avoid Double Taxation ("TADT"), reduced taxes may be available, however the 4% rate is better than the ones provided by TADT. In addition, the Chilean IRS has ruled that when parties do no compel with thin capitalisation rules the preferment tax rates of DTA do not apply. In other words the 35% tax rate prevails over 5%, 10% or 15% that the TADT may provide. In case the borrower and lender are related, thin capitalisation rules do apply. Among other cases, the parties are deemed to be related when the lender directly or indirectly owns or participates in 10% or more of the capital or profits of the borrower. A borrower is in an "excessive indebtedness situation" when in a commercial year, its debt eligible for the 4% reduced tax rate exceeds the 3/1 ratio its tax base equity (debt/equity). The tax base equity is calculated for this purpose according to special rules. The recent tax reform introduced further norms in what is to be considered debt and stricter rules related to calculation, providing among others that from year 2015 it will be done on an annual basis. Transfer Pricing Rules Finally it is important to indicate that since the transaction is between two related parties, one of them from abroad, the operation will be subject to transfer pricing rules. This means that the loan must comply with the "arm's length" principle as if a third independent party had given the loan. This also suggests that it is prudent to indicate an interest on the loan, specially, if there are large amounts involved. On the other hand, not having an interest would avoid WHT, but there would have to be an important economic reason to explain so. However no "extra margin" is sent abroad when interest is not applied. In this regard please bear in mind that TP norms in Chile are in line with the OCDE recommendations, an although the Chilean IRS focuses its attention on big transactions it has the right to asses and apply fines on the transaction when these norms are overstepped. Finally, it must be said that structuring your investment in Chile through loans may be a good exit plan strategy to repatriate funds back to the head office. The principal of the loan is free of taxation and interest may be taxed with 4% or 35% depending on the case. On the other hand dividends are taxed on a 35% rate, despite a TADT in force ("Chile Clause") and for countries with no TADT hike up to 44,45% when the tax reforms is fully applicable. Harris Gomez Group specifically works with companies that originate from Common Law countries such as Australia, Canada and the United Kingdom. Our team of local and Common law Lawyers work with trained Accountants who understand international reporting standards and can explain concepts in plain English. If you have questions about taxation, cross border or commercial matters, please do not hesitate to contact our offices to coordinate a meeting.

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