



TD 2001/18 - Income tax: which benchmark interest rate does a private company with a substituted accounting period in lieu of the year of income ending on 30 June use for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 ('the Act')?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *8 August 2001*

Taxation Determination

Income tax: which benchmark interest rate does a private company with a substituted accounting period in lieu of the year of income ending on 30 June use for the purposes of Division 7A of Part III of the *Income Tax Assessment Act 1936* ('the Act')?

Preamble

The number, subject heading, date of effect and paragraph 1 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the Taxation Administration Act 1953 and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.

Date of Effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. The benchmark interest rate for the purposes of sections 109N and 109E of the Act for a private company with a substituted accounting period in lieu of the year of income ending on 30 June is the Indicator Lending Rates - Bank variable housing loans interest rate last published by the Reserve Bank of Australia ('RBA') before the start of the private company's substituted accounting period (section 109N(2)).
2. A private company may, with the leave of the Commissioner, adopt an accounting period ending on some date other than 30 June, i.e., a 'substituted accounting period'.
3. Where the Commissioner has granted such leave to a private company, that substituted accounting period becomes the private company's year of income.
4. In the case of a private company with a substituted accounting period, references in sections 109E and 109N to a 'year of income' refer to that substituted accounting period.
5. For private companies with substituted accounting periods, the applicable benchmark interest rate is available from the RBA:
 - at its website; and
 - from their publication entitled 'Reserve Bank of Australia Bulletin'.
6. In the RBA Bulletin and at the RBA's website, the applicable benchmark interest rate is contained in the table headed 'F05 Indicator Lending Rates' within the following sub headings: 'Housing Loans, Variable, Banks, Standard'.

7. Hyperlinks to the RBA's website address containing the F05 Indicator Lending Rates table are available at the ATOassist website at www.ato.gov.au.

8. Care should be taken to use the appropriate benchmark interest rate as the law requires that the rate 'last published' by the RBA before the start of the company's substituted accounting period be used.

9. We understand that the actual publication of the benchmark interest rate for any month occurs on or about the fifteenth day after the end of the relevant month. For example, the rate for September, would not be published until around 15 October.

10. Subject to publication of the benchmark interest rate continuing to take place at around the same time each month, the interest rate **last published** by the RBA before the start of a private company's substituted accounting period starting on the first day of a particular month is the rate shown in the table for the month that is two months before that particular month. (See examples below.)

11. Determinations have been issued which set out the benchmark interest rates applicable for years of income that commenced on 1 July 1998 and 1 July 1999 (Taxation Determinations: TD 1998/22 and TD 1999/39 respectively). The actual benchmark interest rate applicable in relation to private companies with substituted accounting periods may have differed from the rates set out in these determinations.

12. While these determinations apply only to income years that commenced on 1 July, they may have contributed to taxpayers adopting the stated rate in relation to private companies with substituted accounting periods.

13. As a consequence, in relation to a private company with a substituted accounting period in lieu of a year of income that commenced on either 1 July 1998 or 1 July 1999, the Commissioner will accept use of the benchmark interest rate stated in TD 1998/22 or TD 1999/39 respectively where the benchmark interest rate stated in the determination is less than the benchmark interest rate applicable to the substituted accounting period.

Examples

Late balancing private company.

14. *For a private company with a substituted accounting period commencing on 1 October in lieu of the preceding 1 July, the benchmark interest rate for the purposes of sections 109N and 109E of the Act is the rate last published before 1 October. The rate shown in the table applicable to the month of August is the rate to be used. This benchmark interest rate was the one last published by the Reserve Bank prior to 1 October.*

Early balancing private company.

15. *For a private company which adopts a substituted accounting period commencing on 1 April in lieu of the succeeding 1 July, the benchmark interest rate for the purposes of sections 109N and 109E of the Act is the rate last published before 1 April. The rate shown in the table applicable to the month of February is the rate to be used. This benchmark interest rate was the one last published by the Reserve Bank prior to 1 April.*

Commissioner of Taxation

8 August 2001

Previous draft:

Previously issued in draft form as TD 2001/D1

Related Rulings:

TR 92/20; TD 1998/22; TD 1999/39;

Subject references:

- deemed dividends
- benchmark interest rate
- private company distributions
- substituted accounting period

Legislative references:

- ITAA 1936 Part III Division 7A
- ITAA 1936 109E
- ITAA 1936 109N
- ITAA 1936 109N(2)

ATO references:

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