TD 2001/2 - Income tax: Can a private company be taken to have paid a dividend to another company under either section 109C or section 109D of the Income Tax Assessment Act 1936 ('the Act') where the other company is the target entity under an arrangement of the kind contemplated by subsection 109T(1) of the Act?

This cover sheet is provided for information only. It does not form part of *TD 2001/2 - Income tax: Can a private company be taken to have paid a dividend to another company under either section 109C or section 109D of the Income Tax Assessment Act 1936 ('the Act') where the other company is the target entity under an arrangement of the kind contemplated by subsection 109T(1) of the Act?*

This Ruling has been reviewed by the ATO and does not require any updates as at 31 March 2017.

Taxation Determination

Income tax: Can a private company be taken to have paid a dividend to another company under either section 109C or section 109D of the *Income Tax Assessment Act 1936* ('the Act') where the other company is the target entity under an arrangement of the kind contemplated by subsection 109T(1) of the Act?

This Ruling has been reviewed by the ATO and does not require any updates as at 30 March 2017.

Preamble

The number, subject heading, date of effect and paragraphs 1 to 5 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. No.

2. Where a private company makes a payment or loan to another entity that is interposed between the private company and a target entity, and that other entity, or a further entity interposed between the private company and the target entity, makes a payment or loan to the target entity, a deemed payment or loan between the private company and the target entity can arise (see section 109T of the Act).

3. Such a deemed payment or loan can arise where the target entity is a company. However, if the target entity is a company, the private company which made the initial payment or loan is not taken to have paid a dividend under section 109C or section 109D of the Act because of the deemed payment or loan (see section 109K of the Act, which excludes payments and loans from a private company made to another company from the operation of sections 109C and 109D).

4. Subsection 109X(1) of the Act only ensures that a private company may be taken to have paid a dividend under either section 109C or section 109D in respect of the deemed payment or loan to a target entity in circumstances where it makes a payment or loan to another company which is interposed between the private company and the target entity. Subsection 109X(1) does not allow the private company to avoid being taken to have paid a dividend even though it has made a loan to another company which is interposed between the private company and the target entity.

5. Subsection 109X(1) of the Act does not deny the operation of section 109K where the target entity is a company. As a result, a deemed dividend can not arise under section 109C or section 109D in respect of a deemed payment or loan arising under section 109T to a company.

Example 1:

6. Private company A makes a loan of $100,000 to private company B. Private company B then makes a payment of $50,000 to private company C. The circumstances are such that a reasonable person would conclude that private company A made the loan to private company B solely or mainly as part of an arrangement involving the making of a payment to private company C (the target entity). Under section 109V of the Act, private company A is taken to have made a payment to private company C of $50,000. However, section 109K operates to ensure that private company A is not taken under section 109C to have paid a dividend in respect of the payment that private company A is taken to have made to private company C. Subsection 109X(1) does not deny the operation of section 109K in these circumstances.

Example 2:

7. Private company A makes a loan of $100,000 to private company B. Private company B then makes a payment of $100,000 to private company C, which in turn makes a loan of $50,000 to Mr D, an associate of a shareholder in private company A. The circumstances are such that a reasonable person would conclude that private company A made the loan to private company B solely or mainly as part of an arrangement involving the loan to Mr D (the target entity). Under section 109W of the Act, private company A is taken to have made a notional loan of $50,000 to Mr D. No part of the loan by private company C to Mr D has been repaid to private company C by the end of the year of income. Consequently, no part of the notional loan is taken to have been repaid and private company A is taken under section 109D to have paid a dividend of $50,000 to Mr D in the year in which the notional loan is made. This is because subsection 109X(1) allows private company A to be taken to have paid a dividend despite the operation of section 109K. Subsection 109X(1) does not allow the private company to avoid being taken to have paid a dividend even though it has made a loan to another company which is interposed between private company A and the target entity.

Commissioner of Taxation
6 June 2001

Previous draft:
Previously issued as draft Taxation Determination TD 2000/D3

Related Rulings/Determinations:
TR 92/1; TR 97/16

Subject references:
- anti-avoidance measures
- deemed dividends
- shareholder loans
- shareholder payments

Legislative references:
- ITAA 1936 Division 7A of Part III
- ITAA 1936 109C
- ITAA 1936 109D
- ITAA 1936 109K
- ITAA 1936 109T
- ITAA 1936 109V
- ITAA 1936 109W
- ITAA 1936 109X
- ITAA 1936 109X(1)

ATO references:
NO 99/18260-1
BO
FOI No: I 1025291
ISSN: 1038-8982