



***TD 2008/28W - Withdrawal - Income tax: when is income tax of a private company a 'present legal obligation' for the purposes of the distributable surplus calculation under subsection 109Y(2) of Division 7A of Part III of the Income Tax Assessment Act 1936?***

 This cover sheet is provided for information only. It does not form part of *TD 2008/28W - Withdrawal - Income tax: when is income tax of a private company a 'present legal obligation' for the purposes of the distributable surplus calculation under subsection 109Y(2) of Division 7A of Part III of the Income Tax Assessment Act 1936?*



This Determination has been replaced by TD 2012/D1

 This document has changed over time. This is a consolidated version of the ruling which was published on *11 January 2012*



---

# Notice of Withdrawal

---

## Taxation Determination

Income tax: when is income tax of a private company a 'present legal obligation' for the purposes of the distributable surplus calculation under subsection 109Y(2) of Division 7A of Part III of the *Income Tax Assessment Act 1936*?

Taxation Determination TD 2008/28 is withdrawn with effect from today.

1. Taxation Determination TD 2008/28 concerned when income tax of a private company properly payable for an income year, but unpaid at the end of that year, is a 'present legal obligation' for the purposes of the distributable surplus calculation under subsection 109Y(2) of Division 7A of Part III of the *Income Tax Assessment Act 1936*.
2. The Determination has been withdrawn as the Australian Taxation Office has changed its view following the decision of the Full Federal Court in *Commissioner of Taxation v. H* [2010] FCAFC 128.
3. It is replaced by draft Taxation Determination TD 2012/D1.

---

**Commissioner of Taxation**

11 January 2012

---

### ATO references

NO: 1-3FMSSTC

ISSN: 1038-8982

ATOlaw topic: Income Tax ~~ Tax integrity measures ~~ private company distributions