TD 2017/17W - Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2017 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 and how is it used?

Taxation Determination

Income tax: what is the benchmark interest rate applicable for the year of income that commenced on 1 July 2017 for the purposes of Division 7A of Part III of the *Income Tax Assessment Act 1936* and how is it used?

This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this determination, the Commissioner must apply the law to you in the way set out in the determination (unless the Commissioner is satisfied that the determination is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this determination if it turns out that it does not correctly state how the relevant provision applies to you.

Ruling

1. For the income year that commenced on 1 July 2017, the benchmark interest rate for the purposes of sections 109N and 109E of the *Income Tax Assessment Act 1936*[1] is 5.30% per annum.[2]

2. This benchmark interest rate is relevant to private company loans made or deemed to have been made after 3 December 1997 and before 1 July 2017; and to trustee loans made after 11 December 2002 and before 1 July 2017. It is used to:

- determine if a loan made in the 2016-17 income year is taken to be a dividend (paragraph 109N(1)(b) and as applicable, subsection 109D(1) or section 109XB), and
- calculate the amount of the minimum yearly repayment for the 2017-18 income year on an amalgamated loan taken to have been made prior to 1 July 2017(subsection 109E(5)).

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[1] All subsequent legislative references are to the *Income Tax Assessment Act 1936* (ITAA 1936) unless otherwise indicated.

[2] The benchmark interest rate for the purposes of 109N and 109E is equal to the relevant Reserve Bank of Australia Indicator Lending Rates - Bank variable housing loans interest rate.

3. This determination only applies where a private company or trustee, which either made the loan or is taken to have made the amalgamated loan, has an income year that commenced on 1 July 2017.

Example

4. *A private company makes an unsecured loan of $100,000 to a shareholder on 1 July 2016. The loan is made under a written agreement which specifies that the rate of interest payable for all future years must equal or exceed that required by paragraph 109N(1)(b). The term of the loan is 7 years. For the year ended 30 June 2017, as all the requirements of section 109N are met, the loan is not treated as a dividend under Division 7A of Part III. No repayments were made before the private company's 'lodgment day' for the 2016-17 income year. Therefore, the minimum yearly repayment required for the 2017-18 income year is calculated as follows:*

$$\frac{\text{Amount of loan not repaid by the end of the previous year of income} \times \text{Current year's benchmark interest rate}}{1 - \left[\dfrac{1}{1 + \text{Current year's benchmark interest rate}}\right]^{\text{remaining term}}}$$

$$\frac{100{,}000 \times 0.0530}{1 - \left[\dfrac{1}{1 + 0.0530}\right]^{7}}$$

$$= \$17{,}470$$

5. *If repayments made in the 2017-18 income year equal or exceed the minimum yearly repayment, no amount is taken to be a dividend for the purposes of subsection 109E(1).*

6. *The 'lodgment day' is the earlier of the due date for lodgment and date of lodgment of the lender's income tax return for the income year in which the loan is made. The 'lender' is the private company or trustee which made the loan that is subject to Division 7A of Part III.*

Date of effect

7. This Determination applies to the income year commencing on 1 July 2017.

Commissioner of Taxation
28 June 2017

References

Previous draft:
Not previously issued as a draft

Related Rulings/Determinations:
TR 2001/18

Previous Rulings/Determinations:
TD 2012/15; TD 2013/17; TD 2014/20; TD 2015/15; TD 2016/11

Legislative references:
- ITAA 1936
- ITAA 1936 Pt III Div 7A
- ITAA 1936 109D(1)
- ITAA 1936 109E
- ITAA 1936 109E(1)
- ITAA 1936 109E(5)
- ITAA 1936 109N
- ITAA 1936 109N(1)(b)
- ITAA 1936 109XB
- TAA 1953

ATO references

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