

TD 92/194 - Income tax: for imputation purposes does a 'frankable dividend' include a payment made by a private company, that is deemed to be a dividend by virtue of section 108 or section 109 of the Income Tax Assessment Act 1936?

 This cover sheet is provided for information only. It does not form part of *TD 92/194 - Income tax: for imputation purposes does a 'frankable dividend' include a payment made by a private company, that is deemed to be a dividend by virtue of section 108 or section 109 of the Income Tax Assessment Act 1936?*

 This document has changed over time. This is a consolidated version of the ruling which was published on 26 November 1992

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: for imputation purposes does a 'frankable dividend' include a payment made by a private company, that is deemed to be a dividend by virtue of section 108 or section 109 of the *Income Tax Assessment Act 1936*?

1. No. The payment is not one that falls within the exhaustive definition of 'frankable dividend' contained in section 160APA. The fact that an amount is deemed to be a dividend is insufficient to bring it within the definition of 'dividend' in section 6.
2. In summary, section 160APA defines a 'frankable dividend' as a dividend:
 - within the meaning of section 6; or
 - under subsection 47(1) [otherwise than by the operation of subsection 47(2A)]; or
 - an amount under subsection 159GZZP(1):

that is paid on or after 1 July 1987.

3. Section 108 and section 109 are anti-avoidance provisions which relate to private companies. Section 108 deems amounts to be dividends where private companies make payments, advances, loans and credits to their shareholders and associates which are disguised distributions of profit, thereby avoiding income tax. Section 109 deems amounts to be dividends where private companies pay or credit excessive amounts to shareholders, directors and associates in respect of remuneration, retirement or termination of an office or employment.

4. Payments by private companies that, in the Commissioner's opinion, represent a distribution of profits under section 108 or payments to shareholders, directors and associates that are considered excessive for the purposes of section 109, do not fall within the definition of 'dividend' in section 6.

Commissioner of Taxation
26/11/92

FOI INDEX DETAIL: Reference No.

I 1213714

Previously issued as Draft TD 92/D177

Related Determinations:

Related Rulings: IT 2637

Subject Ref: deemed dividends; dividend imputation; frankable dividend; loans

Legislative Ref: ITAA 160APA; ITAA 108; ITAA 109

Case Ref:

ATO Ref: NEW TD12

ISSN 1038 - 8982