TD 1999/39 - Income tax: what is the benchmark interest rate applicable for the year of income commencing on 1 July 1999 for the purposes of Division 7A of Part III of the Income Tax Assessment Act 1936 ('the Act') and how is it used?

Taxation Determination

Income tax: what is the benchmark interest rate applicable for the year of income commencing on 1 July 1999 for the purposes of Division 7A of Part III of the *Income Tax Assessment Act 1936* ('the Act') and how is it used?

Preamble

This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and is legally 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. For the income year beginning on 1 July 1999, the **benchmark interest rate** for the purposes of sections 109N and 109E of the Act is **6.5%** per annum.

2. This benchmark interest rate is relevant to loans made, or deemed to have been made after 3 December 1997 and before 1 July 1999. It is used for the following purposes:

- **For the 1998-99 income year** – to determine if a loan made in that year is taken to be a dividend (paragraph 109N(1)(b)).
- **For the 1999-2000 income year** – to determine whether minimum yearly repayments have been paid on a loan made prior to 1 July 1999 (subsection 109E(5)).

Example

3. A private company makes an unsecured loan to a shareholder on 1 July 1998. 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) of the Act. The term of the loan is 5 years. For the year ended 30 June 1999, as all the requirements of section 109N are met, the loan is not treated as a dividend under Division 7A.

4. If the amount of the loan not repaid at 30 June 1999 is \$100,000 the minimum yearly repayment required for the 1999-2000 year of income is calculated as follows:

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

$$= \frac{100{,}000 \times 0.065}{1 - \left(\dfrac{1}{1 + 0.065}\right)^{5}}$$

$$= \$24{,}063$$

5. If repayments made in the 1999-2000 year of income equal or exceed the minimum yearly repayment, the amount of the loan not repaid at the end of the year of income is not taken to be a dividend for the purposes of subsection 109E(1).

Commissioner of Taxation

28 July 1999

Previous draft:
Not previously released in draft form

Related Rulings/Determinations:
TD 98/21

Subject references:
deemed dividends; benchmark interest rate; private company distributions

Legislative references:
ITAA 1936 Part III Division 7A
ITAA 1936 109E; 109N

Case references:

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