

# ***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 ruling is being reviewed as a result of a recent court/tribunal decision. Refer to Decision Impact Statement: [Commissioner of Taxation v H \(Published 21 February 2011\)](#).

! [This Determination has been replaced by TD 2012/D1](#)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*



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## Notice of Withdrawal

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### 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Taxation Determination TD 2008/28 is withdrawn with effect from today.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 The Determination has been withdrawn as the Australian Taxation Office has changed its view following the decision of the Full Federal Court in *Commissioner of Taxation v. H* [2010] FCAFC 128.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.

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**Commissioner of Taxation**

11 January 2012

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ATO references

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