

TD 98/22 - Income tax: under Division 7A of Part III of the Income Tax Assessment Act 1936 ('the Act'), how is the benchmark interest rate used for private company loans to shareholders or associates?

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 This document has changed over time. This is a consolidated version of the ruling which was published on *31 January 2001*



Taxation Determination

Income tax: under Division 7A of Part III of the *Income Tax Assessment Act 1936* ('the Act'), how is the benchmark interest rate used for private company loans to shareholders or associates?

Preamble

The number, subject heading, date of effect and paragraphs 1, 2, 3 and 5 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and are legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.

[Note: This is a consolidated version of this document. Refer to the Tax Office Legal Database (<http://law.ato.gov.au>) to check its currency and to view the details of all changes.]

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, it 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. The **benchmark interest rate** is used to determine:
 - (a) if a loan is not to be taken as a dividend in the year in which the loan is made (section 109N); and
 - (b) whether minimum yearly repayments have been made in years after the year in which the loan is made (section 109E).

Year in which loan is made

2. For a loan not to be treated as a dividend under Division 7A in the year in which it is made, it is necessary that the loan meet the requirements of subsection 109N(1). These requirements are:
 - (a) the loan is made under a written agreement; and
 - (b) the rate of interest payable on the loan for years of income after the year in which the loan is made equals or exceeds the benchmark interest rate for the year as defined in subsection 109N(2); and
 - (c) the term of the loan does not exceed the maximum term as specified in subsection 109N(3).

3. If the requirements of section 109N are satisfied, there is no requirement, under Division 7A of Part III, to pay interest or make repayments in the year a loan is made.

Note: sections 109K, 109L and 109M also specify circumstances when loans are not treated as dividends. The operation of those sections is not covered in this Taxation Determination.

