

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.

Example 1

4. A private company makes an unsecured loan to a shareholder on 5/12/1997. The loan is made under a written agreement which specifies that the rate of interest payable for all future years of income must equal or exceed that required by paragraph 109N(1)(b) of the Act. The term of the loan is 7 years.

For the year ended 30 June 1998, as all the requirements of section 109N are met, the loan is not treated as a dividend under Division 7A.

Years after the year in which the loan is made

5. For a loan not to be treated as a dividend in years after the year in which it is made, it is necessary that the taxpayer makes a minimum yearly repayment in relation to the loan. The amount of the minimum yearly repayment is worked out using the formula in subsection 109E(6).

Example 2

6. If the amount of a loan not repaid at 30 June 1998 is \$100,000, the term of the loan is five years, the remaining term of the loan is also five years, the repayments made for the 1998-99 year of income were \$26,000 and the current year benchmark interest rate is 6.7%, the minimum yearly repayment for the 1998-99 year of income is calculated as follows:

$$\begin{aligned}
 & \text{Amount of the loan not repaid by} \quad \times \quad \text{Current year's} \\
 & \text{the end of the previous year of income} \quad \text{benchmark interest rate} \\
 \hline
 & \frac{1}{1 - \left(\frac{1}{1 + \text{Current year's benchmark interest rate}} \right)^5} \\
 & = \frac{100,000 \times 0.067}{1 - \left(\frac{1}{1 + 0.067} \right)^5} \\
 & = 24,193
 \end{aligned}$$

7. Since repayments made for the 1998-99 year of income 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 October 1998

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Related Determinations: TD 98/21

Related Rulings:

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

Legislative Ref: ITAA 109E; ITAA 109E(1); ITAA 109E(6); ITAA 109K; ITAA 109L; ITAA 109M; ITAA 109N; ITAA 109N(1); ITAA 109N(1)(b); ITAA 109N(2); ITAA 109N(3)

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