

JOINT SUBMISSION BY

CPA Australia, the Institute of Chartered Accountants in Australia, National Institute of Accountants, the Taxation Institute of Australia and Taxpayers Australia

Draft Taxation Determination TD 2010/D10

Income tax: Division 7A – payments and loans through interposed entities – factors the Commissioner will take into account in determining the amount of any deemed payment or loan arising under section 109T of the Income Tax Assessment Act 1936

Date Due: 4 February 2011

The Professional Bodies welcome the opportunity to comment on Draft Taxation Determination TD 2010/D10 (the Draft Determination).

GENERAL COMMENTS

We commend the Commissioner on issuing the Draft Determination as the practical application of the 'back-to-back' arrangements under section 109T of the Income Tax Assessment Act (1936) ('the ITAA (1936)') has been of concern to taxpayers and their advisers for many years.

We believe that the analysis of Subdivision E contained in the Draft Determination is fundamentally the correct approach. However, short of any further valid illustration or clarification being provided paragraph 2(g) should be deleted from the finalised Determination.

The only additional comment that we have is to request that the Commissioner to confirm by way of Determination, (in either the finalised version of this Draft Determination or in another separate future Draft Determination), that an analogous approach to that which has been adopted in this Draft Determination will also be adopted in relation to the determination of a deemed payment or loan under the recently introduced provisions under subsection 109XH(1) of Subdivision EB of the ITAA (1936). In our view taxpayers equally require the same comfort in relation to similar issues arising out of the application of subsection 109XH(1).