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Page status: **not legally binding**

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Public advice and guidance compendium – TD 2017/20

This is a compendium of responses to the issues raised by external parties to draft Taxation Determination TD 2017/D1 – *Income tax: is a person who is not a beneficiary of the trust capable of having a distribution made to them for the purposes of section 272-60 of Schedule 2F to the Income Tax Assessment Act 1936?*

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1.	Example 6 might be usefully expanded to explain that each transaction is a separate and distinct trigger event.	Example 6 has not been expanded given Example 1 provided guidance that each transaction is a separate and distinct trigger event for considering the application of section 272-60 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i> .
2.	That the benefit in Example 2 might properly be provided to the beneficiary, and then on-provided to the ultimate recipient.	Whilst any transaction requires a proper examination of the surrounding facts and circumstances, it is the Commissioner's view that (in the context of the definition of 'distributes' in section 272-60 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>) an acquaintance of a beneficiary is capable of receiving a distribution of the kind described in Example 2.
3.	Given the release date (being so close to the 30 June deadline for tax agent trust distribution related work), and that the draft reflects a change in ATO view, a further period be allowed for agents and taxpayers to adjust to the new view.	ATO Interpretative Decision ATO ID 2012/12 set out the former ATO view. This ATO ID was incorrect and was withdrawn. To provide certainty, the draft Taxation Determination issued on the same day the ATO ID was withdrawn (8 June 2017). This final Taxation Determination will not apply to distribution transactions which have begun to be carried out on or before 7 June 2017.
4.	The 'practical safe harbour' in paragraph 20 should be extended to all arm's length dealings regardless of whether the dealing was an incident of a business carried on.	The Commissioner does not agree with this suggestion.
5.	Examples might be included to clarify the relevance to the operation of both the Pattern of Distributions Test and liability to Family Trust Distribution Tax (FTDT).	Paragraph 6 of the final Taxation Determination explains that FTDT is imposed in relation to distributions of income or capital to an entity that is not a member of the family group of the individual specified in the family trust election. A note has been added after paragraph 6 in relation to the pattern of distributions test.