


TD 2010/10EC - Compendium

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Page status: **not legally binding**

Page 1 of 1

Ruling Compendium – TD 2010/10

This is a compendium of responses to the issues raised by external parties to draft TD 2009/D5 – Income tax: can Part IVA of the *Income Tax Assessment Act 1936* apply to an employee savings plan as described in Taxpayer Alert TA 2008/13?

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

| Issue No. | Issue raised | ATO Response/Action taken |
|------------------|--|---|
| 1 | The incentive arrangements in TA 2008/13 and TD 2009/D5 are accepted as effective salary sacrifice arrangements. However the Commissioner indicates that he will nonetheless apply Part IVA of the <i>Income Tax Assessment Act 1936</i> (ITAA 1936) to such arrangements. Part IVA of the ITAA 1936 should not apply to a genuine loan arrangement so that where an employer makes a loan to an employee to allow an employee to acquire employer shares or units; this should not of itself attract Part IVA. That is, Part IVA should not apply to employee share scheme or trust arrangements. Further it would be unusual for these arrangements to be entered into for a dominant tax purpose as many are entered into for genuine commercial and incentive reasons. | The arrangement as described in the Determination is not a salary sacrifice arrangement as described in Taxation Ruling TR 2001/10: Income tax: fringe benefits tax and superannuation guarantee: salary sacrifice arrangements. The ATO view is that, under a salary sacrifice arrangement, the rights to salary or wages income are permanently sacrificed in return for the provision of benefits of an equivalent amount. It is assumed that the income 'sacrificed' is dealt with at that time under other taxing provisions. Whether an arrangement is akin to the arrangement described in the Determination will depend on all the facts and circumstances of that arrangement. |