

TD 2014/13EC - Compendium



This cover sheet is provided for information only. It does not form part of *TD 2014/13EC - Compendium*

This edited version of the Compendium of Comments is not intended to be relied upon. It provides no protection from primary tax, penalties, interest or sanctions for non-compliance with the law.

Page status: **not legally binding**

Page 1 of 1

Ruling Compendium – TD 2014/13

This is a compendium of responses to the issues raised by external parties to Draft Tax Determination TD 2014/D9 *Income tax: does a United Kingdom resident company (UK Co), that beneficially owns a dividend paid by an Australian resident company (Aus Co), hold directly at least 10 per cent of the voting power in Aus Co for the purposes of Article 10.2(a) of the United Kingdom Convention (the Convention)*^{*} in the following circumstances:

(a) a nominee shareholder owns shares carrying at least 10 per cent of the voting power in Aus Co for the benefit of UK Co, and

(b) the nominee undertakes to UK Co to exercise all rights of voting and other privileges attaching to the shares in such manner as UK Co shall direct or approve?

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

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	Consideration should be given to shortening the title of the Draft Determination which is lengthy and consumes 60% of the first page of the pdf printed version.	The title has been changed.
2	The Draft Determination is concise and focussed in its analysis on the issue at hand, the application of the 'hold directly' phrase in the treaty in the context of a 'vanilla' nominee scenario. The Draft Determination does not extend to a broader analysis of beneficial ownership or 'holds directly'.	Noted.
3	It would be useful to provide a citation for the <i>Lamesa</i> case referred to in the passage quoted from the <i>McDermott</i> case (at paragraph 9 of the Draft Determination).	Paragraph 9 has been amended to include the case citation as a footnote.
4	The interpretation taken in the Draft Determination is welcomed and is consistent with the underlying policy (in this case the clear underlying policy of the double tax agreements).	Noted.

^{*} *The Convention between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains [2003] ATS 22.*