


TD 2022/5EC - Compendium

 This cover sheet is provided for information only. It does not form part of *TD 2022/5EC - Compendium*

Public advice and guidance compendium – TD 2022/5

❶ Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Taxation Determination TD 2021/D3 *Income tax: aggregated turnover – application of the ‘connected with’ concept to corporate limited partnerships*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO’s general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

Issue number	Issue raised	ATO response
All legislative references in this Compendium are to the <i>Income Tax Assessment Act 1997</i> .		
1	The final Determination should provide further guidance in the form of examples on how taxpayers should apply the ‘connected with’ principle in instances where the relevant partnership agreement does not confer the requisite voting power for partners.	We recognise that the application of the ‘voting control’ test in paragraph 328-125(2)(b) in the context of corporate limited partnerships can raise interpretive and practical issues, particularly where such rights are not specified in the relevant limited partnership agreement. However, the determination of whether a limited partner directly controls a limited partnership for the purposes of paragraph 328-125(2)(b) in such circumstances is dependent on the specific facts and circumstances pertaining to the limited partnership. In light of this, we encourage taxpayers encountering this issue to approach the Commissioner for advice on their specific circumstances.
2	The ATO should consider developing guidance on the application of the Commissioner’s discretion in subsection 328-125(6) to make a determination that one entity does not control another if the control percentage is at least 40% and less than 50%.	The circumstances in which the Commissioner will exercise the discretion pursuant to subsection 328-125(6) involve a number of interpretive and practical considerations which are beyond the scope of this Determination. The ATO is considering what separate guidance can be provided to address these issues.