

TD 98/D18 - Income tax: is a cash collateralisation arrangement acceptable for parties entering into a Land Transport Facilities borrowings agreement?

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This document has been finalised by TD 1999/32.

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: is a cash collateralisation arrangement acceptable for parties entering into a Land Transport Facilities borrowings agreement?

1. No, when coupled with above-market interest rates and captive loan arrangements with investors.
2. The Land Transport Facilities borrowings tax offset is available on the borrowings quantified and on the conditions specified in the agreement. Those borrowings must be spent on construction of the approved land transport facilities. 'Cash collateralisation' requires the borrower to raise a matching amount of funds to be provided as a cash deposit security to the lender.
3. 'Cash collateralisation' is one example of so-called dual funding structures. Others include 'economic defeasance' and 'forward purchase arrangements'.
4. This type of structure facilitates:
 - circular flows of funds;
 - captive loan arrangements coupled to above-market interest rates; and
 - significant cost to revenue.
5. The presence of any such arrangement is indicative of a scheme that would require an examination of the dominant purpose of the parties involved and may attract the application of Part IVA of the *Income Tax Assessment Act 1936*.
6. Pursuant to subsection 396-75(2) of the *Income Tax Assessment Act 1997*, the Commissioner is obliged to advise the Minister for Transport and Regional Services in relation to the application of the Income Tax Assessment Acts.
7. Depending on the facts of a particular case, the Commissioner may include advice on the possible application of Part IVA where dual funding structures are proposed.

Your comments

8. If you wish to comment on this draft Determination, please send your comments by 15 January 1999 to:

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Commissioner of Taxation

25 November 1998

FOI INDEX DETAIL: [Reference No.](#)

[Related Determinations:](#)

[Related Rulings:](#)

[Subject Ref:](#) financing; land transport facilities tax offset; tax avoidance

[Legislative Ref:](#) ITAA97 Pt 3-45 Div 396; ITAA97 396-75(2); ITAA36 Pt IVA

[Case Ref:](#)

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