

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: will a lender under a Land Transport Facilities borrowings agreement be denied deductions in respect of their own funding costs if they lend to the borrower at a lower rate of interest?

1. The extent to which the Commissioner would allow a deduction for funding costs where lenders become eligible for a tax offset will depend on the facts of each particular case.
2. A lender under a Land Transport Facilities borrowings agreement would be expected to lend at a rate of interest that provided it with a reasonable commercial return on its borrowed funds.
3. In Taxation Ruling TR 95/33 we stated that if an outgoing produces no assessable income, or the amount of the assessable income is less than the amount of the outgoing, then it may be necessary to examine all the circumstances surrounding expenditure to determine whether the outgoing is wholly deductible. This may include an examination of the taxpayer's subjective purpose, motive or intention. If the expenditure is genuinely used in the production of assessable income then a deduction would be allowable.
4. However, TR 95/33 also envisages apportionment of expenditure in some instances, notably where expenditure is explained by another objective, such as the derivation of exempt income or the obtaining of a tax deduction.

Your comments

5. 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:](#) TR 95/33

[Subject Ref:](#) land transport facilities tax offset; financing; negative gearing; non recourse loans; interest expenses; interest income; interest rates

[Legislative Ref:](#) ITAA97 Pt 1-3 Div 8; Pt 3-45 Div 396

[Case Ref:](#) Fletcher & Ors v. FC of T (1991) 173 CLR 1; 66 ALJR 11; 103 ALR 97; 91 ATC 4950; (1991) 22 ATR 613

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