
Taxation Determination

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

Preamble

This Taxation Determination is a ‘public ruling’ for the purposes of Part IVAAA of the *Taxation Administration Act 1953* and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding.

Date of effect

This Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. 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.
2. ‘Cash collateralisation’ is one example of so-called dual funding structures. Others include ‘economic defeasance’ and ‘forward purchase arrangements’.
3. This type of structure may include:
 - circular flows of funds;
 - captive loan arrangements;
 - above-market interest rates; and
 - non-recourse loans to investors.
4. The presence of any or all of these features in an 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*.
5. 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.
6. 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.

Commissioner of Taxation

9 June 1999

Previous draft:

TD 98/D18

Related Rulings/Determinations:

TD 1999/31; TD 1999/33

Subject references:

financing; land transport facilities tax offset; tax avoidance

Legislative references:

ITAA97 Pt 3-45, Div 396; ITAA97 396-75(2); ITAA36 Pt IVA

Case references:

ATO references:

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