

TD 2000/24 - Income tax: are partners entitled to a deduction under section 8-1 for interest on borrowings to pay personal income tax?



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Taxation Determination

Income tax: are partners entitled to a deduction under section 8-1 for interest on borrowings to pay personal income tax?

Preamble

*The number, subject heading, date of effect and paragraphs 1 to 3 of this Taxation Determination are a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and are legally binding on the Commissioner. The remainder of the Determination is administratively binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain how a Determination is legally or administratively binding.*

Date of Effect

This Determination applies from 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. No. For interest to be deductible under section 8-1 of the *Income Tax Assessment Act 1997* it must be either incurred in gaining or producing assessable income or necessarily incurred in carrying on a business for the purpose of gaining or producing such income.
2. The personal expenses of an individual partner are not incurred in the carrying on of a partnership business. Any borrowing by the individual partner on account of income tax relates to that partner's personal income tax obligation and lacks any direct connection with the business or income activities of the partnership. See *Case 14/98* 98 ATC 201; *AAT Case 13,135* (1998) 39 ATR 1105.
3. Nor can it be said that the interest expense is incurred in deriving assessable income. A payment of income tax plays no part in the derivation of assessable income (see *Case V48* 88 ATC 380; *AAT Case 4178* (1988) 19 ATR 3334). Nor does the fact that it may obviate the need to withdraw partnership equity give it the requisite essential character (see *FC of T v. Munro* (1926) 38 CLR 153).

Note:

4. Taxation Ruling TR 95/25 considers the deductibility of interest on funds borrowed by a partnership to refinance partnership equity. A rigid tracing approach to the application of those distributed funds e.g., where the funds have been applied by an individual partner to the payment of

income tax, does not determine the question of deductibility of interest on any borrowing to the partnership.

Commissioner of Taxation

7 June 2000

Previous draft:

Previously issued in draft form TD2000/D2

Related Rulings/Determinations:

TR 95/25

Subject references:

- borrowings and loans;
- interest expenses;
- joint interests;
- partnership interests

Legislative references:

- ITAA 1997 8-1

Case references:

- Case 14/98 98 ATC 201; AAT Case 13,135 (1988) 39 ATR 1105;
 - Case V48 88 ATC 380; AAT Case 4178 (1998) 19 ATR 3334;
 - FC of T v. Munro (1926) 38 CLR 153
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ATO references:

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