


***TD 2016/10 - Income tax: what is the Indicator Lending Rate applicable to capital protected borrowings under subsection 247-20(5) of the Income Tax Assessment Act 1997 and subsection 247-80(4) of the Income Tax (Transitional Provisions) Act 1997?***

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# Taxation Determination

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Income tax: what is the Indicator Lending Rate applicable to capital protected borrowings under subsection 247-20(5) of the *Income Tax Assessment Act 1997* and subsection 247-80(4) of the *Income Tax (Transitional Provisions) Act 1997*?

**❶ This publication provides you with the following level of protection:**

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## Ruling

1. The Indicator Lending Rate that is applicable under subsection 247-20(5) of the *Income Tax Assessment Act 1997* (ITAA 1997)<sup>1</sup> and subsection 247-80(4) of the *Income Tax (Transitional Provisions) Act 1997* (ITTP 1997) is the Reserve Bank of Australia's (RBA) Indicator Lending Rate for Standard Variable Housing Loans – Investor.

## Date of effect

2. This Determination applies from 11 September 2015.

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**Commissioner of Taxation**

22 June 2016

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<sup>1</sup> All legislative references are to the *Income Tax Assessment Act 1997*, unless otherwise stated.

## Appendix 1 – Explanation

**①** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

3. Division 247 of the ITAA 1997 applies to borrowers who entered into or extended a capital protected borrowing (CPB) on or after 16 April 2003.

4. A CPB product is an arrangement that involves borrowing or provision of credit where the borrower is protected against a fall in the value of the securities (protected things) that are either purchased using the amount borrowed or credit provided, or provided as security for the borrowing or provision of credit.

5. Division 247 only applies to protected things that comprise shares in a company, units in unit trusts or stapled securities, whether held directly or indirectly.

6. The object of Division 247 is to ensure the correct treatment of CPBs for income tax purposes. In particular, it ensures that the part of the expense of a CPB attributable to the cost of capital protection is treated as separate to and distinct from the interest payable on a borrowing without capital protection. This amount is not deductible where this cost is capital in nature.

7. Division 247 provides a method statement for working out what part of the expense is attributable to the capital protection feature of the CPB. This is done by identifying the extent to which the total amount incurred by the borrower under the CPB exceeds the total interest that would have been incurred on the borrowing at the adjusted loan rate established by subsection 247-20(5).

8. Generally, the adjusted loan rate is the sum of:

- (a) the RBA's Indicator Lending Rate for Standard Variable Housing Loans at that time, and
- (b) 100 basis points.

9. The same requirements apply to certain CPBs entered into on or before 13 May 2008, as provided for under section 247-80 of the ITTP 1997.

10. A single series of Indicator Lending Rate for Standard Variable Housing Loans was published up to July 2015 in *RBA Statistical Bulletin* Table F5, accessible on the RBA's website. This series was identified as 'FILRHLBVS'.

11. On 11 September 2015, the RBA announced that it would publish two series of Indicator Lending Rates for Standard Variable Housing Loans – one for Owner-Occupier and another for Investor.

12. The Owner-Occupier series has the same series ID as the former single series Indicator Lending Rate for Standard Variable Housing Loans, that is, 'FILRHLBVS'. The Investor series is currently identified as 'FILRHLBVS' in Table F5 of the RBA's *Statistical Bulletin*, accessible on the RBA's website.

13. The Commissioner considers that the RBA's Indicator Lending Rate for Standard Variable Housing Loans – Investor is the appropriate rate to use because the protected things falling within the scope of Division 247 are inherently investment in nature. The credit risk profile faced by lenders in CPBs, particularly the risk of default by the borrower, is more closely aligned with lenders who provide loans to borrowers investing in housing than they are with lenders who provide loans to borrowers purchasing a home to occupy.

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## References

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*Previous draft:*

Not previously issued as a draft

- ITTP 1997 247-80(4)
- Taxation Administration Act 1953

*Legislative references:*

- ITAA 1997 Div 247
- ITAA 1997 247-20(5)
- ITTP 1997 247-80

*Other references:*[RBA Statistical Bulletin](#) Table F5

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*ATO references*

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