


TR 2000/17ER - Erratum - Income tax: deductions for interest following the Steele and Brown decisions

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Erratum

Income tax: deductions for interest following the *Steele* and *Brown* decisions

At **paragraph 38** replace the following heading:

'Alternative view' with **'Penalty 'interest' payments'**.

At **paragraph 39** replace the following heading:

'Penalty 'interest' payments' with **'Alternative view'**.

Paragraphs 38 and 39 will then read:

Penalty 'interest' payments

38. In a case where borrowed funds are lost and there is a penalty imposed upon early repayment of the borrowing, that penalty will be deductible as if it were interest that could not be avoided (see second dot point in paragraph 16) whether or not it can truly be characterised as interest. More generally, penalty 'interest' is discussed in Taxation Ruling TR 93/7.

Alternative view

39. The alternative view argues that the fact that the taxpayer is legally entitled to repay the principal does not necessarily mean that the occasion for the outgoing fails to be found in what was productive of assessable income. The alternative view proposes that a relevant distinction can be drawn between a roll-over facility of the type discussed in *Brown's* case and a relatively long-term loan facility under which the borrower has the right to make early capital repayment. This distinction can be illustrated by comparing the cases in the instance of a borrower who wants to "keep the facility going". In the former case, the exercise of the right to roll over creates a new, or at least renewed, loan agreement. In the latter case, the decision not to make early repayment obviously produces no such result. Under the alternative view it is the renewal which breaks the nexus between interest incurred subsequent to the act of renewal and the previous income earning activities.

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Commissioner of Taxation

20 December 2000

ATO references:

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