


# ***TD 2022/1EC - Compendium***

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## **Public advice and guidance compendium – TD 2022/1**

### **❶ Relying on this Compendium**

This Compendium of comments provides responses to comments received on draft Taxation Determination TD 2019/D9 *Income tax: commercial debt forgiveness – does the exclusion for debts forgiven for reasons of natural love and affection require that the creditor be a natural person?* It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

### **Summary of issues raised and responses**

<b>Issue number</b>	<b>Issue raised</b>	<b>ATO response</b>
1	<p>A more detailed discussion and exploration of the issues should be developed, preferably in the form of a public ruling. The discussion should explore the following sets of circumstances:</p> <ul style="list-style-type: none"><li>• where the creditor is a natural person</li><li>• where the creditor is a company</li><li>• where the debt is forgiven in the context of a trust relationship, considering the variations between when the trustee is a natural person and when the trustee is a corporate trustee, and</li><li>• where the debt is forgiven in the context of a partnership.</li></ul>	<p>The final Determination sufficiently explains the basis on which the Commissioner considers paragraph 245-40(e) of the <i>Income Tax Assessment Act 1997</i><sup>*</sup> requires that the creditor is a natural person. This necessarily means that paragraph 245-40(e) cannot apply where the creditor is a company.</p> <p>Paragraphs 20 and 21 of the final Determination have been added to address the application of paragraph 245-40(e) where the debt is forgiven by a natural person in their capacity as a trustee, or as a partner in a partnership.</p>
2	<p>The Determination should explore in more detail which parties the natural love and affection is between, including</p>	<p>Paragraph 3 of the final Determination has been updated to confirm there is no requirement for the debtor to be a natural person.</p>

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<sup>\*</sup> All legislative references in this Compendium are to the *Income Tax Assessment Act 1997*.

Issue number	Issue raised	ATO response
	whether the debtor also needs to be a natural person for the exception to apply.	Paragraphs 16 to 19 of the final Determination explain the basis on which paragraph 245-40(e) is capable of applying in circumstances where the debtor is not a natural person.
3	The view in the draft Determination should apply prospectively only in respect of debts forgiven from the date the Determination is finalised.	<p>We disagree.</p> <p>The final Determination applies both before and after its date of issue. However, as noted at paragraph 5 of the final Determination, the Commissioner will not be devoting compliance resources in relation to debts forgiven prior to 6 February 2019 that would have been covered by ATO Interpretative Decision ATO ID 2003/589 <i>Commercial debt forgiveness – can a company forgive a debt for reasons of natural love and affection?</i></p> <p>The change in the Commissioner's view from the position expressed in ATO ID 2003/589 was adequately explained from 6 February 2019.</p>