

TD 2000/D2 - 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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This document has been finalised by TD 2000/24.

Draft Taxation Determination

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

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

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* (1998) 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.

TD 2000/D2

Page 2 of 2

FOI status: draft only - for comment

Your comment

5. We invite you to comment on this Draft Taxation Determination. We are allowing 4 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

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Commissioner of Taxation

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Previous draft:

Not previously issued in draft form

Related Rulings/Determinations:

Taxation Ruling 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 (1998) 39 ATR 1105; Case 48 88 ATC 380; AAT Case 4178 (1998) 19 ATR 3334; FC of T v. Munro (1926) 38 CLR 153

ATO references:

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