


# ***TD 2018/9EC - Compendium***

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## **Public advice and guidance compendium – TD 2018/9**

This is a compendium of responses to the issues raised by external parties to draft Taxation Determination TD 2017/D4 *Income tax: deductibility of interest expenses incurred by a beneficiary of a discretionary trust on borrowings on-lent interest free to the trustee*.

This compendium of comments has been edited to maintain the anonymity of entities that have commented.

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

<b>Issue No.</b>	<b>Issue raised</b>	<b>ATO response/Action taken</b>
1	Do not agree with the view expressed in the draft determination that interest incurred in the circumstances considered could only be deductible if the relevant taxpayer (the beneficiary of a discretionary trust) is presently entitled to income of the trust estate at the time the expense is incurred.	TD 2017/D4 reflects the Commissioner's understanding of the case law in so far as it relates to the circumstances under consideration.
2	The decisions of <i>Forrest v. FCT</i> [2010] FCAFC 6 and <i>Lambert v. FCT</i> [2013] AATA 442 provide no direct support for the proposition advanced in the draft determination.	While dealing with factual scenarios not directly on point, the Commissioner is of the view that the cases provide support for the position described in TD 2017/D4 at the level of principle.
3	There is an opportunity to extend the scope of the draft determination to include all expenses incurred by beneficiaries of a discretionary trust as the rationale applies to most other expenses incurred.	Agreed. Although the Determination is concerned only with interest deductibility, we have added paragraph 3 to Taxation Determination TD 2018/9 <i>Income tax: deductibility of interest expenses incurred by a beneficiary of a discretionary trust on borrowings on-lent interest-free to the trustee</i> to clarify that the same principles apply in relation to other expenses incurred by a beneficiary of a discretionary trust, to the extent that the relevant connection with assessable income is sought to be made with distributions from that trust.
4	Reference should be made to the principle in <i>FCT v.</i>	Additional content has been added to footnote 10 to address

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<b>Issue No.</b>	<b>Issue raised</b>	<b>ATO response/Action taken</b>
	<i>Total Holdings 79 ATC 4279</i> and to distinguish that case from the circumstances of the draft determination.	this point.
5	<p>The Commissioner should clarify whether or not a beneficiary is able to deduct some or all of the interest expense incurred in circumstances where the beneficiary charges interest to the trustee. Specifically, where the interest rate charged to the trust is:</p> <ul style="list-style-type: none"><li>• less than the rate incurred by the beneficiary?</li><li>• equal to the rate incurred by the beneficiary?</li><li>• higher than the rate incurred by the beneficiary?</li></ul>	This issue goes beyond the scope of TD 2017/D4. If the funding is provided by the beneficiary to the trustee at interest, different issues come into play, namely there is another item of assessable income with which the expenses could find a nexus.