TD 2011/12EC - Compendium

Ruling Compendium – TD 2011/12

This is a compendium of responses to the issues raised by external parties to draft TD 2010/D3 – Income tax: where an equity interest is a financial arrangement which satisfies both subsections 230-45(1) and 230-50(1) of the *Income Tax Assessment Act 1997*, which provision applies?

This compendium of comments has been edited to maintain the anonymity of entities that commented on the draft ruling.

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1	The draft Determination refers to Example 2.17 of the Explanatory Memorandum to the Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 (the Explanatory Memorandum). It is presumed the example is referring to a convertible note where the issuer has the option to convert to shares. A different result would occur where the convertible note is a debt interest (that is, the holder has the option to convert). In such a case, because of paragraph 230-50(2)(b) of the *Income Tax Assessment Act 1997* (ITAA 1997)[*], the arrangement will be a section 230-45 financial arrangement.	Example 2.17 is a continuation of Example 2.2 in the Explanatory Memorandum. The convertible note in Example 2.2 is one which at maturity provides Hamish Co with an option to convert the note and receive ordinary shares in the company. It is beyond the scope of the Determination to express a view on when a convertible note would be an equity interest under Division 974, or to clarify rights and obligations arising in Example 2.17. Our view is that it is unnecessary to set out factors relevant to the operation of Division 974 in order to express the ATO view of the interaction between subsection 230-45(1) and subsection 230-50(1). Although the Explanatory Memorandum example states that the issuer has an obligation to return Hamish Co's investment at maturity, which could provide a basis for construing the investment as a debt, at the end of the example it is hypothesised that the convertible note is an equity interest.

[*] All legislative references in this compendium are to the ITAA 1997 unless otherwise indicated.