

TD 2017/21EC - Compendium



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Page status: **not legally binding**

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Public advice and guidance compendium – TD 2017/21

This is a compendium of responses to the issues raised by external parties to draft Taxation Determination TD 2016/D6 *Income tax: where an Australian corporate tax entity is a partner in a partnership, can the partnership 'hold' a direct control interest (within the meaning of section 350 of the Income Tax Assessment Act 1936) in a foreign company for the purpose of Subdivision 768-A of the Income Tax Assessment Act 1997.*

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

Summary of issues raised and responses

Issue No.	Issue raised	ATO Response/Action taken
1.	The interpretation and approach adopted in the draft Taxation Determination is appropriate.	Noted.
2.	The test time for determining whether there is a participation interest should be highlighted in the draft Taxation Determination.	The relevant test time is set out in the Example (see paragraph 10) and in the Explanation section (see paragraph 20).
3.	<p>The draft Taxation Determination should cross reference the related guidance in draft Taxation Ruling TR 2016/D2 <i>Income tax: distributions from foreign companies - meaning of 'at the time the distribution is made' when applying the participation test</i> and draft Taxation Determination TD 2016/D7 <i>Income tax: where an Australian corporate tax entity is a beneficiary of a trust, can the trust be taken to 'hold' a direct control interest (within the meaning of section 350 of the Income Tax Assessment Act 1936) in a foreign company for the purpose of Subdivision 768-A of the Income Tax Assessment Act 1997?</i></p> <p>It would also be desirable to briefly highlight that the effective dates for determining whether there is a participation interest in respect of indirect holdings is different for holdings through partnerships and trusts.</p>	<p>We have added a reference to the related guidance in footnotes 6 and 10.</p> <p>The reader is directed to the relevant guidance where the interposed entity is a trust rather than a partnership.</p>

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Issue No.	Issue raised	ATO Response/Action taken
4.	The draft Taxation Determination should clarify the meaning of 'partnership' and that it covers the tax law definition of partnership in section 995-1 of the ITAA 1997.	The meaning of partnership has been clarified in footnote 2 which also explains that the Taxation Determination does not cover situations where the interposed entity is a corporate limited partnership (see also footnote 6).
5.	The decision to make the Taxation Determination retrospective from the date that Subdivision 768-A commenced (distributions made on or after 17 October 2014) should be appropriate in most cases.	Noted.