



THE TAX INSTITUTE

1 November 2019

Mr Matthew Maher
Tax Counsel Network
Australian Taxation Office
GPO Box 9990
MELBOURNE VIC 3001

By email: matthew.maher@ato.gov.au

Dear Mr Maher,

Draft Taxation Determination TD 2019/D9

The Tax Institute welcomes the opportunity to make a submission to the Australian Taxation Office (**ATO**) in relation to the 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?* (**Draft TD**).

Summary

Our submission below addresses our main concerns in relation to the Draft TD, which are:

- A more detailed discussion and exploration of the issues should be developed, preferably in the form of a public ruling; and
- The Draft TD should apply prospectively only to debts forgiven from the date of its finalisation.

Discussion

1. More detailed discussion is required

The Tax Institute notes the change in view that the Commissioner has taken in relation to the exclusion in the commercial debt forgiveness rules where the Commissioner's view is now that the exclusion for debts forgiven for reasons of natural love and affection require that the creditor must be a natural person. This represents a departure from the view held by the Commissioner in *ATO Interpretative Decision ATO ID 2003/589 Commercial debt forgiveness – can a company forgive a debt for reasons of natural love and affection (withdrawn on 6 February 2019)* (**ATO ID**) where the Commissioner held the view that a company can forgive a debt for reasons of natural love and affection. The Commissioner has acknowledged the change in view at paragraph 5 – The Tax Institute welcomes this acknowledgement.

However, The Tax Institute is concerned that the Draft TD deals with this matter very narrowly. In our view, a much more detailed discussion is required to properly deal with this matter, preferable in the form of a public ruling. The discussion should explore in detail the following sets of circumstances:

- where the creditor is a natural person;
- where the creditor is a company;
- 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
- where the debt is forgiven in the context of a partnership.

The Tax Institute considers that the exclusion for debts forgiven for reasons of natural love and affection could potentially apply in each of the circumstances noted above. It would be useful for the Commissioner to explore these circumstances and provide a more comprehensive explanation as to whether the exclusion is likely to be available (or not) in each of these circumstances. In particular, such guidance should explore in more detail which parties the 'natural love and affection' is between - eg debtor and company, debtor and shareholder(s) of the company, trustee and debtor, etc.

This is particularly necessary given that up until 6 February 2019 the Commissioner accepted that a company could forgive a debt for reasons of natural love and affection, though upon the application of the Draft TD, this is no longer the case. We also believe a much more detailed exploration of the issues is required given the complex nature of human and business relationships.

2. Prospective application of the Draft TD

The Tax Institute welcomes the statement in paragraph 5 that the Commissioner will not apply compliance resources to debts forgiven prior to 6 February 2019. However, if the Commissioner is to maintain the view in the Draft TD, the Draft TD should apply prospectively only to debts forgiven from the date the Draft TD is finalised.

If you would like to discuss any of the above, please contact either myself or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours faithfully,



Tim Neilson
President