

DETERMINATION > FINANCIAL ARRANGEMENTS > GENERAL

Exemption from Section 64C for Small Debtors

Issued: 30 May 1989

G15

This Determination may be cited as "Determination G15: Exemption from Section 64C for Small Debtors".

1 Explanation (which does not form part of the determination)

1. This determination is intended to allow debtors to avoid the calculations necessary under section 64C where the amounts involved are small.
2. This determination exempts a natural person from compliance with section 64C of the Act, in relation to a financial arrangement where the person has not prepaid more than three month's interest at the end of the income year, where—
 - (a) The person is an issuer of a financial arrangement (for example a debtor); and
 - (b) The person is a cash basis holder, as defined in section 64D of the Act, in respect of any financial arrangements that the person holds; and
 - (c) The total of the person's liabilities for financial arrangements for business or assessable income producing purposes is not more than \$200,000 at the end of the income year in question.
3. Where a person might otherwise be allowed a deduction for the same expenditure twice in successive income years due to a decision to take advantage or to cease to take advantage of this determination, section 106(1)(o) of the Act provides that the later of the supposed deductions is not to be allowed.
4. Where a partnership comprises only persons to whom this determination applies, this determination shall apply to the partnership.
5. Clause 3(2) of this determination has been inserted for the avoidance of doubt on the position of trustees.
6. Use of this determination is optional. No notice is required whether the determination is used or not.
7. Holders of financial arrangements to which the small debtor is the other party must account for income or expenditure for that financial arrangement in accordance with section 64B to 64M of the Act.

2 Reference

This determination is made under section 64C(6) of the Act.

3 Scope of Determination

1. This determination shall apply to—
 - (a) Any natural person in every income year in relation to which the person is a qualifying small debtor; and
 - (b) Any partnership in every income year in which the partnership comprises only persons who are qualifying small debtors in relation to the income year.
2. This determination shall not apply to any trustee.

4 Interpretation

1. In this determination, unless the context otherwise requires,—

Expressions used have the same meanings as in the Act and where a word or expression is given a particular meaning for the purposes of sections 64B to 64M of the Act it shall have the same meaning as in the said sections 64B to 64M;

“The Act” means the Income Tax Act 1976:

“Qualifying small debtor” in relation to an income year means a natural person—

(a) The total value of whose liabilities under specified financial arrangements is not more than \$200,000 at the end of the income year; and

(b) Who—

(i) Is a cash basis holder in respect of all financial arrangements held by the person at the end of the income year (other than financial arrangements of any class dealt with by the Commissioner in terms of section 64D(2)(b) of the Act); or

(ii) Holds no financial arrangements at the end of the income year:

“Specified financial arrangement” means a financial arrangement (whether entered into before or after the implementation date for such class of financial arrangement), interest payable on which is deductible, or on which interest would be deductible if it were payable, pursuant to section 106(1)(h) of the Act in calculating the assessable income of the person in the income year;

“Total value” of a person’s liabilities under specified financial arrangements at any time means the amount required to satisfy all those financial arrangements at that time,

disregarding any penalty to be suffered by the person or any benefit to which the person is entitled for early repayment.

2. For the purposes of this determination, financial arrangements issued by a partnership shall be treated as separate financial arrangements issued by each partner to the extent of the partner's liability (as agreed between the partners) in respect of financial arrangements issued by the partnership, and any payment made or expenditure incurred by the partnership in relation to the financial arrangement issued by the partnership shall, for the purpose of this determination, be treated as having been paid or incurred by each partner in proportion of such liability.

5 Exemption

1. A person who, in relation to an income year, is a qualifying small debtor shall not be required to comply with the requirements of section 64C(2), (3) and (4) of the Act in relation to expenditure incurred in respect of any financial arrangement in the income year:

Provided that this exemption shall not apply to any financial arrangement—

(a) Where the qualifying small debtor would, if section 64C was not applicable, incur expenditure in relation to the financial arrangement and a period ending more than three months after the end of the income year, other than fees that relate to the commencement of the financial arrangement and do not exceed 2% of the amount of the consideration provided to the person in relation to the financial arrangement before the end of the income year;

(b) Of any class dealt with by the Commissioner in terms of section 64D(2)(b) of the Act.

2. A partnership that, in an income year, comprises only persons who are qualifying small debtors in relation to the income year shall not be required to comply with the requirements of the section 64C(2), (3) and (4) of the Act in relation to expenditure incurred in respect of any financial arrangement in the income year:

Provided that this exemption shall not apply to any financial arrangement—

(a) Where the partnership would, if section 64C was not applicable incur expenditure in relation to the financial arrangement and a period ending more than three months after the end of the income year, other than fees that relate to the commencement of the financial arrangement and do not exceed 2% of the amount of the consideration provided to the partnership in relation to the financial arrangement before the end of the income year:

(b) Of any class dealt with by the Commissioner in terms of section 64D(2)(b) of the Act.

6 Examples

EXAMPLE A: INTEREST IN ARREARS

1. On 15 March 1990 a loan company advances \$10,000, repayable on 15 September 1991, to natural person X for business related purposes. In addition X owes \$250,000 on money borrowed to purchase a private residence, interest on which is not deductible in the taxpayer's particular circumstances. X is also a cash basis holder, as defined in section 64D of the Act. X has no other liabilities thus total debts for business purposes are less than \$200,000.

There is a \$100 processing fee, paid at commencement, and fixed interest of 20% p.a. is payable half-yearly in arrears.

2. At income year-end 31 March 1990, X is a qualifying small debtor and chooses to take advantage of this determination. X claims only the \$100 fee as a deductible expense, notwithstanding that interest has accrued under the financial arrangement.

At 31 March 1991, X has retained his or her status as a qualifying small debtor and claims the interest due and paid on 15 September 1990 and 15 March 1991 — a total of \$2000.

3. On repayment of the loan in September 1991, the base price adjustment as defined in section 64F(2) of the Act is applied by X:

a the amount of all consideration paid by the borrower:

\$13,000

b the acquisition price of the facility:

\$10,000

c expenditure incurred under section 64C:

$\$100 + \$2,000 = \$2,100$

Hence: $a - (b + c)$

$= \$13,100 - (10,000 + 2,100)$

$= \$1,000$ deemed expenditure

EXAMPLE B: INTEREST PAYABLE IN ADVANCE

1. The loan conditions specified in Example A above apply, except that interest is payable in advance (on 15 March 1990, 15 September 1990, and 15 March 1991). Hence, although the person X is a qualifying small debtor as at 31 March 1990 and 31 March 1991, the financial arrangement is not exempt because more than three months interest has been prepaid.
2. Expenditure in respect of the \$10,000 advance for the income years ended 31 March 1990 and 1991 must be calculated pursuant to section 64C(2) of the Act. On repayment of the loan in 1991 the base price adjustment is applied.
3. Person X takes out a further loan of \$15,000 where interest is payable six monthly in arrears. The second loan does qualify for the exemption because the total value of X's liabilities for business purposes is less than \$200,000 and interest is not prepaid on this loan.

EXAMPLE C: PARTNERSHIP

1. Natural persons A, B, and C are business partners in ABC which has a 31 December income year. On 31 October 1991 the partnership enters into an agreement to borrow \$500,000 for business purposes. The partners are jointly and severally liable under the financial arrangement, but they have agreed that they share liability under the financial arrangement as between themselves in the same ratio as their shares of partnership income: A is entitled to fifty percent of the partnership income; B and C share the remaining fifty percent equally.

The loan is for a six month term, and carries interest at 15 percent payable in quarterly instalments on 30 January and 30 April.

B and C are cash basis holders, and each of them has other business-related debts amounting to less than \$25,000.

As A is not a qualifying debtor, the partnership is outside the scope of this determination.

2. On 31 March 1992, B and C are qualifying small debtors, in that their respective liabilities under financial arrangements are less than \$200,000. However, the exemption from complying with the requirements of section 64C of the Act only applies for B and C's business-related financial arrangements other than their share in ABC.

In the 1992 income year, the partnership is obliged to apply the accrual tax accounting rules to the partnership financial agreement to borrow \$500,000.

3. The loan details in paragraph (1) above apply except that partners A, B, and C have agreed that they share liability under the financial arrangement equally, and A is a cash basis holder.

As all partners in ABC are qualifying small debtors, the partnership can account for partnership liabilities under this determination.

EXAMPLE D: PRIVATE & DOMESTIC LIABILITIES NOT TAKEN INTO ACCOUNT

S, a natural person, has a mortgage of \$400,000 on his or her principal residence for private purposes. In the 1990 income year, S enters into a \$100,000 second mortgage on the same property for business purposes. Interest is payable monthly in advance. S is the issuer of no other business financial arrangements.

At year-end, S is a cash basis holder and borrowings for business purposes total less than \$200,000. The terms of the second mortgage qualify the loan as a specified financial arrangement. Person S may therefore elect to apply this determination, and not comply with section 64C at the end of the 1990 income year-end in respect of the loan.

About this document

General determinations set out the Commissioner's view on how the financial arrangements rules apply to a specific type of financial arrangement. All general determinations are binding on the Commissioner and some are also binding on taxpayers.