Sent: Thursday, 7 May 2009 8:49 AM
To: TIES;
Cc:
Subject: Tax Issues Entry System issues 0036-2009

Hi

Would you please ask the business line to make a preliminary assessment of this issue? My TOFA contact says that is the expert. It's not clear whether this issue is a practical matter or whether it is a major policy issue. The law may be operating as intended.

Thanks

R

From: TIES [mailto:TIES@ato.gov.au]
Sent: Thursday, 7 May 2009 7:18 AM
To: TIES
Subject: FW: Tax Issues Entry System

Hi all,

New issue.

Ext

From: TIES_Web_Site [mailto:TIES_Web_Site]
Sent: Wednesday, 6 May 2009 16:22
To: TIES
Subject: Tax Issues Entry System

Tax Issues Entry System **Issue Number 0036-2009**

Issue Details

Title:

First Name:

Surname:

Business hours phone number:

Mobile phone number:

Email address:

Postal address:

Preferred contact: Phone

	Email
Submitting on behalf of a professional body:	Yes
Name of professional body:	
Role in professional body:	Consultant
Concerning:	Income Tax
Act issue relates to:	Income Tax Assessment Act 1997
Section issue relates to:	Division 247
Description of issue:	As a professional body representing a broad section of taxpayers, we are aware that certain employers operate employee share schemes where the employer company makes limited recourse loans to employees to acquire shares and charges interest on the loans. As the loan provided to the employees is limited recourse, the capital protected borrowing (CPB) rules in Division 247 of the Income Tax Assessment Act 1997 could apply to restrict the deduction that the employees can claim for the interest paid on the loan. An exclusion from Division 247 applies to shares acquired under an “employee share scheme”. However, under Division 13A of the Income Tax Assessment Act 1936 (“ITAA 1936”), a share is only acquired under an employee share scheme if the share's acquisition price is less than the “market value” of the share as determined under the market value rules in section 139FA of Division 13A of the ITAA 1936. Typically, under these types of plans, shares are acquired for market value, so the exclusion in Division 247 would not apply. This is contrary to the stated intention of Division 247 (Explanatory Memorandum at paragraph 7.41 provides - "this measure is not to apply to CPB's under which a company provided limited recourse loans to employees to buy shares in their employer companies").
Affect on clients:	Tax treatment of interest expense incurred by employees.
Possible solution:	To extend the exclusion in Division 247 to all shares acquired by employees (where the scheme provides a loan to employees to acquire shares at a market value) rather than shares acquired under an “employee share scheme” (as defined in Division 13A).