IT 2288 - Interest withholding tax: exemption from withholding tax: public subscription and wide distribution of debentures outside Australia

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TAXATION RULING NO IT 2288

INTEREST WITHHOLDING TAX: EXEMPTION FROM WITHHOLDING TAX: PUBLIC SUBSCRIPTION AND WIDE DISTRIBUTION OF DEBENTURES OUTSIDE AUSTRALIA

F.O.I. EMBARGO: May be released

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1078024	INTEREST WITHHOLDING TAX: PUBLIC SUBSCRIPTION AND WIDE DISTRIBUTION OF DEBENTURES	128F

OTHER RULINGS ON TOPIC : CITCM 867, IT 2238

PREAMBLE Sub-section 128F(2) of the Income Tax Assessment Act 1936 exempts from withholding tax interest paid by a resident company on bearer debentures issued outside Australia where, among other things, the Commissioner has issued a certificate under sub-section 128F(4). A certificate may be issued under sub-section (4) where the Commissioner is satisfied that, having regard to the factors listed in sub-paragraphs (a)(i) to (a)(iv) inclusive of the sub-section, it is reasonable to regard the debentures as having been issued with the view to public subscription or purchase or other wide distribution among investors.

2. The operation of sub-section (4) was addressed in an enquiry recently dealt with in this office. A resident public company proposed to raise $x million by means of what was termed a bankers acceptance facility. The funds were necessary to finance the importation of goods in connection with the operation of the Australian businesses of the company group.

3. The facility was to be arranged with a London based company which would act as manager and agent in respect of the facility. The funds would be raised through the US and UK bill market. Notes and bills (they would be both accepted and discounted by members of a tender panel of 12 to 16 or more major international banks operating in the US and UK markets) would be issued through the agent outside Australia. Initially funds would be raised in the US. However, where there were arbitrage advantages, i.e. advantages accruing from different prices of the bills in different markets funds would be raised in the UK and swapped into $US. The debentures, notes and bills would be offered for subscription in accordance with a credit agreement between the manager/agent, the Australian borrower and the members of the tender panel. Underwriters would be included in the tender panel.

4. Notice of drawdowns by the Australian company under the facility would be communicated to the tender panel members. They would be invited to submit bids for acceptances and discounting bills of exchange. Bills would be allocated to tenderers in ascending order of yield and would be placed with each tenderer for acceptance. Bills would be drawn by the Australian company on the successful tenderers (acceptors) for periods of up to 6 months and would be endorsed in blank by the drawer. Each acceptor would be required to discount its own bills paying net proceeds to the borrower.

5. Acceptors in the US market would be committed under the credit agreement to use their best endeavours to sell the paper into a wide market and not to hold the paper on their own account. Sterling market acceptors would be committed to offer their paper to the agent bank referred to in paragraph 3 above who would act as a dealer for the placement of bills into the market. The agent in turn would undertake to offer the paper on Reuters screens which are accessible to some 12,500 subscribers in 98 countries.

6. It appears that the three major holders of US bankers' acceptances are municipalities and public bodies - about 40% of the market, banks - about 40% and corporations - about 20%. Only a proportion of the US bankers' acceptances held by banks are held for their own account. The remainder are held by trust departments on behalf of institutional or private investors.

7. On the other hand the major holders of UK bills have recently been the Bank of England - about 65% of the market, banks - about 20%, discount houses - about 11% and non-bank private sector - about 4%.

8. An issue of bills under the facility in the US market would be accepted as being issued with a view to public subscription or purchase or other wide distribution among investors in terms of paragraph 128F(4)(a). On the other hand, in the knowledge that a separate issue under the facility in the UK market would or could result in up to 65% of the bills being held by the Bank of England, it would be difficult to regard the bills as having been issued for public subscription, purchase etc. as required by sub-section 128F(4).

9. To overcome this difficulty the proposals for issues in the UK market were to be amended as follows. The London agent would no longer be solely responsible for the distribution of acceptances in the UK market. Successful tenderers would carry out that function. The credit agreement would be amended to the effect that acceptances would not be rediscounted with the Bank of England or be placed with the London Discount Market Association, the latter being the major supplier of bills to the Bank. Finally, should the Bank of England show, at any time, a greater interest in the market than private investors the rate of return on the acceptances would be adjusted to induce purchases by private investors.

RULING 10. On the basis of the amended proposals, it was confirmed this office would be satisfied that the bills would be issued with a view to public subscription or purchase or other wide distribution among investors. Other requirements of section 128F being met, a certificate under the section could be expected for a US, a UK or a composite issue.

COMMISSIONER OF TAXATION
28 April 1986