

TD 1999/12 - Income tax: withholding tax avoidance - do the withholding tax avoidance provisions of Part IVA and, in particular, section 177CA of the Income Tax Assessment Act 1936 apply to a decision by a company to establish a programme for the issue of debentures in respect of which interest is exempt from interest withholding tax pursuant to the operation of section 128F?



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Taxation Determination

Income tax: withholding tax avoidance – do the withholding tax avoidance provisions of Part IVA and, in particular, section 177CA of the *Income Tax Assessment Act 1936* apply to a decision by a company to establish a programme for the issue of debentures in respect of which interest is exempt from interest withholding tax pursuant to the operation of section 128F?

Preamble

*This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the **Taxation Administration Act 1953** and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding.*

Date of effect

This determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. No, unless there is a dominant purpose to obtain a tax benefit as outlined in paragraph 177D(b). The application of Part IVA is a question of fact to be determined on a case by case basis. The decision of a company to issue a debenture, and the decision by an investor to acquire the debenture, so as to comply with the requirements of section 128F (rather than to raise, or provide, finance in a way that would result in a liability to interest withholding tax in respect of interest paid) would not attract the application of Part IVA, or a determination by the Commissioner to apply Part IVA, where the dominant purpose of the parties under section 177D is to raise, and provide, finance rather than to avoid the creation of a liability to interest withholding tax.

Commissioner of Taxation

12 May 1999

Previous draft:

TD 1999/D5

Related Rulings/Determinations:

TD 1999/8; TD 1999/9; TD 1999/10; TD 1999/11; TD 1999/13; TD 1999/14; TD 1999/15; TD 1999/16;
TD 1999/17; TD 1999/18; TD 1999/19; TD 1999/20; TD 1999/21; TD 1999/22; TD 1999/23; TD 1999/24;
TD 1999/25; TD 1999/26

Subject references:

Legislative references:

ITAA 128F; ITAA Part IVA; ITAA 177CA; ITAA 177D; ITAA 177D(b)

Case references:

ATO references:

NO 97/6464-0; 99/658-1

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