TD 1999/18 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - for the purposes of the fifth public offer test, in paragraph 128F(3)(e), in what circumstances is a debenture taken to be 'offered for issue'?

This cover sheet is provided for information only. It does not form part of *TD 1999/18 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - for the purposes of the fifth public offer test, in paragraph 128F(3)(e), in what circumstances is a debenture taken to be 'offered for issue'?*

Australian Taxation Office

Taxation Determination **TD 1999/18**

Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* – for the purposes of the fifth public offer test, in paragraph 128F(3)(e), in what circumstances is a debenture taken to be 'offered for issue'?

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. The public offer test in paragraph 128F(3)(e) (the 'fifth public offer test') enables a company to issue debentures to a dealer, manager or underwriter who agrees with the company to offer the debentures for sale, or procure subscription for the debentures, within 30 days in a way covered by any of paragraphs (a) to (d) of subsection 128F(3).

2. The 30 day period specified in paragraph 128F(3)(e) is taken to commence from the day on which the dealer, manager or underwriter has an unconditional obligation to offer the debentures for sale, under the agreement contemplated in that paragraph.

3. In relation to the public offer test in paragraph 128F(3)(a), both the company and the dealer, manager or underwriter have a responsibility for ensuring the debentures are offered for issue to at least 10 eligible persons who are not known or suspected to be associates. As pointed out in the explanatory memorandum to *Taxation Laws Amendment Act (No 2) 1997*, the company offering the debentures for sale does not need to undertake a detailed examination of the parties to whom the debentures are offered. Therefore, the company may rely on the expectation the dealer, manager or underwriter has complied with the conditions set out in paragraph 128F(3)(a). The company cannot, however, ignore persons it **knows** to be an associate and use the defence that it relied on the dealer, manager or underwriter.

4. If dealers, managers or underwriters subscribe for the debentures on their own behalf and not on the basis they are to be onsold in accordance with paragraph 128F(3)(e), the public offer test is satisfied if the debentures are offered for issue by the company in accordance with any of paragraphs (a) to (d) of subsection 128F(3). In such a case, the debentures are not required to be offered for issue in accordance with paragraph 128F(3)(e).

Commissioner of Taxation
12 May 1999

Previous draft:

TD 1999/D11

Related Rulings/Determinations:

TD 1999/8; TD 1999/9; TD 1999/10; TD 1999/11; TD 1999/12; TD 1999/13; TD 1999/14; TD 1999/15; TD 1999/16; TD 1999/17; 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 128F(3); ITAA 128F(3)(a); ITAA 128F(3)(b); ITAA 128F(3)(c); ITAA 128F(3)(d); ITAA128F(3)(e); TLAA (No 2) 1997

Case references:

ATO references:
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