TD 1999/19 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - does an issue of a debenture fail the public offer test in subsection 128F(5) if an associate of the company that issued the debenture takes a security interest over the debenture?

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Australian Taxation Office

Taxation Determination **TD 1999/19**

Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* – does an issue of a debenture fail the public offer test in subsection 128F(5) if an associate of the company that issued the debenture takes a security interest over the debenture?

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 the security interest is held by way of mortgage or similar security and **at the time of issue** the issuing company knew or had reasonable grounds to suspect an interest in the debenture was being, or would later be, acquired by an associate.

2. Whether reasonable grounds exist is, of course, a question of fact to be determined in the light of the individual facts and circumstances of each case. Although reasonable care must be taken, a detailed examination into this matter would not be expected at or before the date of issue.

Commissioner of Taxation
12 May 1999

Previous draft:

TD 1999/D12

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 1999/18; 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(5)

Case references:

ATO references:
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