TD 1999/20 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - for the purposes of the exemption exclusion in subsection 128F(6), when does a known associate of the company who is acting in the capacity of a dealer, manager or underwriter in relation to the placement of a debenture, and who receives interest, attract the exclusion?

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Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* – for the purposes of the exemption exclusion in subsection 128F(6), when does a known associate of the company who is acting in the capacity of a dealer, manager or underwriter in relation to the *placement* of a debenture, and who receives interest, attract the exclusion?

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 object of subsection 128F(6) is to ensure the exemption is only available to genuine public issues of debentures and not related party loans. However, it would be inconsistent with the purpose of the legislation to take an overly restrictive approach.

2. Subsections 128F(5) and 128F(6) complement each other. Subsection 128F(5) deals with the situation where the company knew or had reasonable grounds to suspect, at the time of issue, the debenture would be acquired by an associate. Subsection 128F(6) deals with the situation where, at the time debenture interest is paid, the holder is an associate.

3. Under subsection 128F(5), the associate may obtain the debentures in the capacity of dealer, manager or underwriter. It would be unreasonable to penalise an associate in one of these capacities where the associate has made a genuine attempt to offer the debentures for sale in accordance with paragraph 128F(3)(e), but is still holding the debentures at the time interest is paid.

4. Similarly, it would be unreasonable to penalise associates who receive interest as paying agents or as operators of a clearing house.

5. Subsection 128F(6) should, therefore, be read as denying an exemption from interest withholding tax where interest is paid to an associate holding debentures other than in a genuine temporary capacity.

Commissioner of Taxation
12 May 1999

Previous draft:
TD 1999/D13

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 1999/19; 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)(e); ITAA 128F(5); ITAA 128F(6)

Case references:

ATO references:
NO 97/6464-0; 99/658-1
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