TD 1999/8 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - when will an issue of debentures be taken to have 'resulted from' the debentures being 'offered for issue' for the purposes of the public offer test in subsection 128F(3)?

This cover sheet is provided for information only. It does not form part of *TD 1999/8 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - when will an issue of debentures be taken to have 'resulted from' the debentures being 'offered for issue' for the purposes of the public offer test in subsection 128F(3)?*

Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* – when will an issue of debentures be taken to have 'resulted from' the debentures being 'offered for issue' for the purposes of the public offer test in subsection 128F(3)?

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 view has been put that the introductory words of subsection 128F(3), which require the issue of debentures to result from being offered for issue, do not sit comfortably with actual market practice and, in many cases, the requirements of subsection 128F(3) would not be satisfied if a strictly literal interpretation were adopted.

2. In many cases, for instance, issues of debentures will result from an approach to, or an enquiry by, a potential investor who may not have actually seen the debenture issue announcement. In some cases, the potential issuer could be unaware whether the enquiry has resulted from the announcement or not.

3. The requirements in subsection 128F(3) are, of course, directed at ensuring an adequate dissemination of the details of the relevant issue to the markets. To adopt a strict view that reverse enquiries would be excluded from the public offer test would frustrate the operation of section 128F.

4. Accordingly, subsection 128F(3) will be administered on the basis that a debenture will be taken to have 'resulted from' being 'offered for issue' if the debenture otherwise satisfies one of the paragraphs set out in subsection 128F(3).

Commissioner of Taxation
12 May 1999

Previous draft:

TD 1999/D1

Related Rulings/Determinations:

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 1999/20; 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)

Case references:

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