


TD 93/146A2 - Addendum - Income tax: should a resident deduct withholding tax from interest payable under a loan from a non-resident if there is no actual payment of the interest?

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Addendum

Taxation Determination

Income tax: should a resident deduct withholding tax from interest payable under a loan from a non-resident if there is no actual payment of the interest?

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953*. It amends Taxation Determination TD 93/146 to update legislative references and references to Taxation Rulings.

TD 93/146 is amended as follows:

1. Paragraph 1

Omit the second and third sentences; substitute 'The requirement to withhold the tax arises at the time the interest is 'paid' or 'payable' under Subdivision 12-F of Schedule 1 to the *Taxation Administration Act 1953* (TAA).'

2. Paragraph 2

Omit the paragraph; substitute:

2. Sections 12-245, 12-250 and 12-255 of Subdivision 12-F of Schedule 1 to the TAA require a person to withhold amounts from payments of interest. Section 11-5 of the same Schedule deems an amount to have been paid or payable when the paying entity applies or deals with the amount, or is required to apply or deal with the amount, in any way on the other's behalf or as the other directs.

3. Paragraph 3

- (a) In the first sentence, insert 'of the *Income Tax Assessment Act 1936* (ITAA 1936)' after 'subsection 128B(5)'.
- (b) In the first sentence, omit 'him/her'; substitute 'them'.
- (c) Omit the second sentence; substitute 'Subsection 128A(2) of the ITAA 1936 deems the interest to have been paid to a non-resident when it is applied or dealt with on behalf of, or as directed by, the non-resident in a manner similar to that described in subsection 11-5(1) of Schedule 1 to the TAA.'.
- (d) Omit the last sentence.

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4. Example

In the first sentence omit '1992'; substitute '2011'.

5. Related Rulings

Omit heading and paragraph.

6. Legislative References

- (a) Omit 'ITAA 1936 221YL(2A); ITAA 1936 332YL(2B); ITAA 1936 221YK(3)'.
- (b) Insert 'TAA 1953 11-5' after 'Subdiv 12-F'.

This Addendum applies on and from 22 March 2017.

Commissioner of Taxation

22 March 2017

ATO references

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