

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part 4VAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, the Determination applies to transactions entered into both before and after its date of issue.

Taxation Determination

Income tax: is a payment made under a loan agreement with a foreign lender, which is

- (a) in addition to stipulated interest payments as per the agreement,**
- (b) calculated at a specified percentage rate, and**
- (c) designed to compensate the lender for timing differences between the deduction of Australian withholding tax and the crediting of the withholding tax against income tax imposed in the lender's home country,**

in the nature of interest and, therefore, subject to the deduction of withholding tax under section 128B of the *Income Tax Assessment Act 1936*?

1. Yes. We consider any payment by a borrower regardless of its description, calculated using a periodic percentage rate to compensate the lender for funding costs associated with differences in timing between the deduction of Australian withholding tax and the absorption, or offsetting, of the withholding tax against income tax imposed in the lender's home country, to be interest or in the nature of interest - as defined by subsection 128A(1). The payment is therefore subject to withholding tax under subsection 128B(5).

Example:

Austco has borrowed \$100 000 from a foreign bank, Forbank. The terms of the contract include:

- interest payable quarterly at 10% per annum*
- a 'fee' of 0.5% p.a. is payable to compensate for withholding tax paid.*

Austco is obliged to deduct interest withholding tax from both of the payments to Forbank.

Commissioner of Taxation

05/11/92

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