
Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* – does the definition of the term ‘debenture’ include an individual share or interest in a 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. Yes. The individual shares or interests in a debenture are debentures for the purposes of section 128F and the public offer test under subsection 128F(3) is to be applied in respect of the interests which constitute that debenture.
2. Most debentures are issued in a form known as a global note, global bond or global certificate (global securities). Originally, these global securities performed a temporary function until individual or definitive securities could be prepared and issued. A temporary global security ceased to exist when the holders were issued with definitive securities. Normal practice now is not to exchange the global security for definitive securities. A permanent global security exists until the loan is repaid or until a specified event, such as default in payment by the issuer, occurs.
3. Marketing arrangements for the distribution of interests in a global security are the same as those for the distribution of conventional debentures and investors who subscribe to the loan each hold an interest in the global security. Any clearing system through which interests in the global security are traded also records investors' individual interests.
4. This Determination is consistent with Taxation Ruling IT 2679 that dealt with issues of debentures in global form under the old section 128F, which operated prior to 1 January 1996. That section then required debentures to be issued with a view to public subscription or purchase or other wide distribution among investors and for the borrowed money to be used in an Australian business.

Commissioner of Taxation

12 May 1999

Previous draft:

TD 1999/D3

Related Rulings/Determinations:

TD 1999/8; TD 1999/9; 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; IT 2679

Subject references:

Legislative references:

ITAA 128F; ITAA 128F(3)

Case references:

ATO references:

NO 97/6464-0; 99/658-1

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