TD 1999/D1 - 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 under subsection 128F(3)?

This cover sheet is provided for information only. It does not form part of *TD 1999/D1 - 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 under subsection 128F(3)?*

This document has been finalised by TD 1999/8.

Draft 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 under subsection 128F(3)?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office (ATO). DTDs may not be relied on; only final TDs are authoritative statements of the ATO.

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).

Your comments

5. If you wish to comment on this draft Determination, please send your comments promptly by Friday 26 February 1999 to:

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Commissioner of Taxation
27 January 1999

Previous draft:
Not previously issued in draft form

Related Rulings/Determinations:
TD 1999/D2; TD 1999/D3; TD 1999/D4; TD 1999/D5; TD 1999/D6; TD 1999/D7; TD 1999/D8; TD 1999/D9; TD 1999/D10; TD 1999/D11; TD 1999/D12; TD 1999/D13; TD 1999/D14; TD 1999/D15; TD 1999/D16; TD 1999/D17; TD 1999/D18; TD 1999/D19

Subject references:

Legislative references:
ITAA 128F; ITAA 128F(3)

Case references:

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