TD 1999/D12 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - does an issue of a debenture fail the public offer test under subsection 128F(5) if an associate of the company that issued the debenture takes a security interest over the debenture?

This cover sheet is provided for information only. It does not form part of *TD 1999/D12 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - does an issue of a debenture fail the public offer test under subsection 128F(5) if an associate of the company that issued the debenture takes a security interest over the debenture?*

This document has been finalised by TD 1999/19.

Draft Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* – does an issue of a debenture fail the public offer test under subsection 128F(5) if an associate of the company that issued the debenture takes a security interest over the debenture?

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. No, unless the security interest is held by way of mortgage or similar security and **at the time of issue** the issuing company knew or had reasonable grounds to suspect an interest in the debenture was being, or would later be, acquired by an associate.

2. Whether reasonable grounds exist is, of course, a question of fact to be determined in the light of the individual facts and circumstances of each case. Although reasonable care must be taken, a detailed examination into this matter would not be expected at or before the date of issue.

Your comments

3. 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/D1; 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/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(5)

Case references:

ATO References:
NO 97/6464-0; 99/658-1
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