TD 1999/D13 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - for the purposes of the exemption exclusion contained in subsection 128F(6), when is a known associate of the company who is acting in the capacity of a dealer, manager or underwriter in relation to the placement of a debenture, and who receives interest, attract the exclusion?

This cover sheet is provided for information only. It does not form part of *TD 1999/D13 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - for the purposes of the exemption exclusion contained in subsection 128F(6), when is a known associate of the company who is acting in the capacity of a dealer, manager or underwriter in relation to the placement of a debenture, and who receives interest, attract the exclusion?*

This document has been finalised by TD 1999/20.

Draft Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* – for the purposes of the exemption exclusion contained in subsection 128F(6), when is a known associate of the company who is acting in the capacity of a dealer, manager or underwriter in relation to the *placement* of a debenture, and who receives interest, attract the exclusion?

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 object of subsection 128F(6) is to ensure the exemption is only available to genuine public issues of debentures and not related party loans. However, it would be inconsistent with the purpose of the legislation to take an overly restrictive approach.

2. Subsections 128F(5) and (6) complement each other. Subsection 128F(5) deals with the situation where the company knew or had reasonable grounds to suspect, at the time of issue, the debenture would be acquired by an associate. Subsection 128F(6) deals with the situation where, at the time debenture interest is paid, the holder is an associate.

3. Under subsection 128F(5), the associate may obtain the debentures in the capacity of dealer, manager or underwriter. It would be unreasonable to penalise an associate in one of these capacities where the associate has made a genuine attempt to offer the debentures for sale in accordance with paragraph 128F(3)(e), but is still holding the debentures at the time interest is paid.

4. Similarly, it would be unreasonable to penalise associates who receive interest as paying agents or as operators of a clearing house.

5. Subsection 128F(6) should, therefore, be read as denying an exemption from interest withholding tax where interest is paid to an associate holding debentures other than in a genuine temporary capacity. That is, where the associate is beneficially entitled to the interest.

Your comments

6. 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
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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/D12; 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)(e); ITAA 128F(5); ITAA 128F(6)

Case references:

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