TD 1999/D14 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - when is a company taken to have the requisite knowledge or suspicion that interest was paid to an associate for the purposes of subsection 128F(6)?

This cover sheet is provided for information only. It does not form part of *TD 1999/D14 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - when is a company taken to have the requisite knowledge or suspicion that interest was paid to an associate for the purposes of subsection 128F(6)?*

This document has been finalised by TD 1999/21.

Australian Taxation Office

Draft Taxation Determination

TD 1999/D14

Draft Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* - when is a company taken to have the requisite knowledge or suspicion that interest was paid to an associate for the purposes of subsection 128F(6)?

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. Subsection 128F(6) disallows the exemption from interest withholding tax in section 128F in circumstances where the interest paid by the company is paid to an associate of the company and the company *knows* or has *reasonable grounds to suspect* such a person is an associate.

2. Whether or not a person is an 'associate' of the company (a defined term) is a question of fact, to be determined in light of the individual facts and circumstances of each case. In the case of registered debentures, the presence of an associate's name on the register on which the interests in the debentures are recorded (as at the date on which entitlement to interest is determined) would generally be considered as sufficient grounds for subsection 128F(6) to apply. However, in the case of bearer debentures it is accepted a company would generally not know who the holder is unless officers of the company knew or had reasonable grounds to suspect interest was paid to an associate of the company.

3. As set out in the explanatory memorandum accompanying the legislation, it would be prudent for companies issuing debentures, to '... direct related parties not to acquire the company's debentures'.

Your comments

4. 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/D12; TD 1999/D13; TD 1999/D15; TD 1999/D16; TD 1999/D17; TD 1999/D18; TD 1999/D19

Subject references:

Legislative references:

ITAA 128F; ITAA 128F(6)

Case references:

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