TD 1999/D17 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - how may a company satisfy the introductory requirements in paragraphs 128F(3)(a) and (b) that a debenture must be offered on a 'debenture by debenture' basis?

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This document has been finalised by TD 1999/24.

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Draft Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* - how may a company satisfy the introductory requirements in paragraphs 128F(3)(a) and (b) that a debenture must be offered on a 'debenture by debenture' basis?

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 introductory words of the first and second public offer tests, in paragraphs 128F(3)(a) and (b), require the issue of a debenture to *result from* the debenture being offered for issue to at least 10 or 100 persons respectively.

2. Concern has been expressed that, if a debenture is offered for issue to 10 or 100 people, and each person accepts, the company would have contracted to sell the same debenture to 10 or 100 different people.

3. For the purposes of the introductory words of paragraphs 128F(3)(a) and (b), 'offered' is not limited to meaning 'offer' in the context of a contractual offer. Rather, the word includes invitations or inducements to potential investors to make offers. For example, the placement of an advertisement that the company wishes to issue debentures, is an attempt to induce offers from potential investors rather than an offer itself (in other words, it is an 'invitation to treat').

4. Therefore, the introductory words are satisfied where the debentures are advertised for issue or other invitations or inducements are made in accordance with their respective public offer test, giving potential investors the opportunity to make an offer to the company for the acquisition of the debenture/s.

5. Further, the reference to debenture in the opening words of paragraphs 128F(3)(a) and (b) includes a tranche of debentures, which includes the debentures as well as interests in a debenture in global form (as to which see Draft Taxation Determination TD 1999/D3).

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
27 January 1999

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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/D13; TD 1999/D14; TD 1999/D15; TD 1999/D16; TD 1999/D18; TD 1999/D19

Subject references:

Legislative references:

ITAA 128F; ITAA 128F(3)(a); ITAA 128F(3)(b)

Case references:

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