TD 1999/D3 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - does the definition of the term 'debenture' include an individual share or interest in a debenture?

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This document has been finalised by TD 1999/10.

Generated on: 22 November 2026, 10:25:51 PM

Australian Taxation Office

Draft Taxation Determination

TD 1999/D3

Draft Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* – does the definition of the term 'debenture' include an individual share or interest in a 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. Yes. The individual shares or interests in a debenture are debentures for the purposes of section 128F and the public offer test under subsection 128F(3) is to be applied in respect of the interests which constitute that debenture.

2. Most debentures are issued in a form known as a global note, global bond or global certificate (global securities). Originally, these global securities performed a temporary function until individual or definitive securities could be prepared and issued. A temporary global security ceased to exist when the holders were issued with definitive securities. Normal practice now is not to exchange the global security for definitive securities. A permanent global security exists until the loan is repaid or until a specified event, such as default in payment by the issuer, occurs.

3. Marketing arrangements for the distribution of interests in a global security are the same as those for the distribution of conventional debentures and investors who subscribe to the loan each hold an interest in the global security. Any clearing system through which interests in the global security are traded also records investors' individual interests.

4. This Determination is consistent with IT 2679 that dealt with issues of debentures in global form under the old section 128F, which operated prior to 1 January 1996. That section then required debentures to be issued with a view to public subscription or purchase or other wide distribution among investors and for the borrowed money to be used in an Australian business.

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/D1; TD 1999/D2; 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; IT 2679

Subject references:

Legislative references:

ITAA 128F; ITAA 128F(3)

Case references:

ATO References:
NO 97/6464-0; 99/658-1
BO
ISSN: 1038-8982