# *TD 1999/D5 - Income tax: withholding tax avoidance - do the withholding tax avoidance provisions of Part IVA and, in particular, section 177CA of the Income Tax Assessment Act 1936 apply to a decision by a company to establish a programme for the issue of debentures in respect of which interest is exempt from interest withholding tax pursuant to the operation of section 128F?*

This cover sheet is provided for information only. It does not form part of *TD 1999/D5 - Income tax: withholding tax avoidance - do the withholding tax avoidance provisions of Part IVA and, in particular, section 177CA of the Income Tax Assessment Act 1936 apply to a decision by a company to establish a programme for the issue of debentures in respect of which interest is exempt from interest withholding tax pursuant to the operation of section 128F?*

This document has been finalised by TD 1999/12.

# Draft Taxation Determination

## Income tax: withholding tax avoidance – do the withholding tax avoidance provisions of Part IVA and, in particular, section 177CA of the *Income Tax Assessment Act 1936* apply to a decision by a company to establish a programme for the issue of debentures in respect of which interest is exempt from interest withholding tax pursuant to the operation of section 128F?

***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. The application of Part IVA is a question of fact to be determined on a case by case basis. Ordinarily, the decision of a company to issue a debenture, and the decision by an investor to acquire the debenture, so as to comply with the requirements of section 128F (rather than raise, or provide, finance in a way that would result in a liability to interest withholding tax in respect of interest paid) would not attract the application of Part IVA, or a determination by the Commissioner to apply Part IVA. This is because the dominant purpose of the parties under section 177D is to raise, and provide, finance rather than to avoid the creation of a liability to interest withholding tax.

**Your comments**

2. 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/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

*Subject references:*

*Legislative references:*

ITAA 128F; ITAA Pt IVA; ITAA 177CA; ITAA 177D

*Case references:*

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