


TD 2001/D15 - Income tax: does a 'permitted purpose' under subsection 160APAAAA(2) of the Income Tax Assessment Act 1936 include the acquisition of equity in a foreign entity (including a subsidiary) by an Australian authorised deposit-taking institution (ADI) through a permanent establishment out of funds raised by the permanent establishment from the issue of non-share equity interests that meet the conditions of subsection 160APAAAA(1)?

 This cover sheet is provided for information only. It does not form part of *TD 2001/D15 - Income tax: does a 'permitted purpose' under subsection 160APAAAA(2) of the Income Tax Assessment Act 1936 include the acquisition of equity in a foreign entity (including a subsidiary) by an Australian authorised deposit-taking institution (ADI) through a permanent establishment out of funds raised by the permanent establishment from the issue of non-share equity interests that meet the conditions of subsection 160APAAAA(1)?*

This document has been finalised by TD 2002/27.

Draft Taxation Determination

Income tax: does a ‘permitted purpose’ under subsection 160APAAAA(2) of the *Income Tax Assessment Act 1936* include the acquisition of equity in a foreign entity (including a subsidiary) by an Australian authorised deposit-taking institution (ADI) through a permanent establishment out of funds raised by the permanent establishment from the issue of non-share equity interests that meet the conditions of subsection 160APAAAA(1)?

Preamble

Draft Taxation Determinations (DTDs) present the preliminary, though considered, views of the Australian Taxation Office. DTDs should not be relied on; only final Taxation Determinations represent authoritative statements by the Australian Taxation Office.

1. Yes.
2. There is only one specific proscription of the use of funds raised by a permanent establishment from the issue of eligible non-share equity interests. This is the exclusion in paragraph 160APAAAA(2)(a) which, broadly, disqualifies any transfer of funds for use in the Australian operations of the ADI, its subsidiaries or any connected entities. This exclusion must be read together with paragraphs 160APAAAA(2)(b) and 160APAAAA(2)(c) dealing with pre-existing obligations. An explanation of the provisions mentioned is contained in paragraphs 2.101 to 2.109 of the Explanatory Memorandum to the New Business Tax System (Debt and Equity) Bill 2001.
3. Having regard to the nature and scope of the exclusion, the business test contained in paragraph 160APAAAA(2)(a) is not to be read down other than subject to the scope of the exclusion. The ‘permitted purposes’ are, subject to the exclusion, any business transactions of a bank. This includes making equity investments in related (as well as unrelated) companies or entities treated as companies that are not covered by the exclusion.
4. This Taxation Determination does not restrict the operation of the general anti-streaming and anti-avoidance provisions.

Your comments

5. We invite you to comment on this draft Taxation Determination. We are allowing 6 weeks for comments before we finalise the Determination. If you want your comments considered, please provide them to us within this period.

Comments by date: 1 February 2001
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Commissioner of Taxation19 December 2001

Previous draft:

Not previously issued in draft form.

Subject references:

- ADI
- Authorised deposit-taking institution
- Foreign branch of Australian bank
- Non-share equity interest
- Permanent establishment
- Permitted purpose

Legislative references:

- ITAA 1936 160APAAAA
- ITAA 1936 160APAAAA(1)
- ITAA 1936 160APAAAA(2)
- ITAA 1936 160APAAAA(2)(a)
- ITAA 1936 160APAAAA(2)(b)
- ITAA 1936 160APAAAA(2)(c)

ATO references:

NO T2001/007 637
T2001/006 486
ISSN: 1038-8982