

IT 2634 - Income tax: the application of tax file number arrangements to loans to government bodies and bodies corporate



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TAXATION RULING NO. IT 2634

INCOME TAX THE APPLICATION OF TAX FILE NUMBER
ARRANGEMENTS TO LOANS TO GOVERNMENT
BODIES AND BODIES CORPORATE

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OTHER RULINGS ON THE TOPIC:

PREAMBLE

Section 202D of Division 4 of Part VA of the Income Tax Assessment Act 1936 (the Act) provides, in tabular form, details of the investments, investors and investment bodies to which the tax file number provisions apply.

2. Item 3 in the table contained in subsection 202D(1) provides that a loan to a government body or body corporate (other than an interest bearing deposit or account with a financial institution or a loan made in the ordinary course of the business of providing business or consumer finance by a person who carries on that business) is an investment to which the tax file number arrangements apply.

3. A person who lends money to an investment body (other than the exclusions mentioned above) may quote his or her tax file number to the investment body i.e., government body or body corporate to ensure that amounts are not deducted from the investment income.

4. The investor is the person in whose name the money is lent (i.e. the lender of the funds) and the investment body is the body to whom the loan is made, namely the government body or body corporate.

5. The objective of this Ruling is to reduce some of the uncertainty which may exist with Item 3 investments. In particular, the recent amendment to this Item will be discussed and terms such as "loan" and "body corporate" which are not defined in the tax file number provisions will be clarified in the context of Item 3 investments. This Ruling does not consider the application of the tax file number provisions in

respect of the trading of money market instruments, as this will be the theme of a subsequent Taxation Ruling.

BACKGROUND

6. Taxation Laws Amendment Act (No. 2) 1990 amended Item 3 of subsection 202D(1) by omitting from the exclusion "a loan by a financial institution" and substituting "a loan made in the ordinary course of the business of providing business or consumer finance by a person who carries on that business".

7. Prior to the amendment, a loan by a lending institution other than a financial institution (being a bank, building society or credit union) to a government body or body corporate would have been an Item 3 investment and would have required the quotation of a tax file number to ensure that amounts were not deducted from the interest payments.

8. Financial institutions were excluded from the application of Item 3 as it was not the intention of the tax file number provisions to include interest repayments in respect of mortgages and other loans in the tax file number arrangements. The purpose of the legislation was to improve the efficiency and effectiveness of the Australian Taxation Office's income matching system which includes the matching of investment income reports with details disclosed by recipients in their tax returns. The reporting of interest paid to providers of consumer finance would not have been useful information for matching purposes.

9. The extended exclusion now means that all loans made in the ordinary course of the businesses of financial institutions, merchant banks, finance companies, other money lending institutions and persons in the business of providing business or consumer finance (hereafter these entities will be referred to as relevant business investors) are outside the scope of the tax file number arrangements.

RULING

The business of providing business or consumer finance

10. The expression "providing business or consumer finance" will generally include the supplying of loan funds, either on an unsecured basis or secured through the issuing of stocks, bonds, notes, mortgages or other instruments.

11. For a person to be a relevant business investor, the providing of finance must be at least part of the person's ordinary business.

12. In determining whether a person is a relevant business investor, consideration should be given to the person's level or scale of lending operations, the continuity and repetition of providing loans and the commercial character of the business.

13. For instance, a number of transactions of lending money entered into continuously and systematically together with other

indicia of the business of supplying funds to the public at large (e.g. advertising by the person that he/she is prepared to make loans on certain terms and having an established place for persons to negotiate loans with him/her) would normally constitute a business of providing business or consumer finance.

14. It follows that if there are a series of transactions constituting a business of providing business or consumer finance, then a transaction which is similar to the others and has the same result is a transaction made in the course of the business. A loan made by a person in the ordinary course of carrying on such a business would generally constitute a normal incident of the business activities carried on by that person.

15. Where a person repeatedly lends sums of money in the course of carrying on his/her business but the person is not in the business of providing business or consumer finance, the transactions entered into would be Item 3 investments and would be subject to the tax file number arrangements. For example, an individual who regularly buys debentures or unsecured notes in response to prospectuses cannot be said to be in the business of providing finance.

16. Loans made by relevant business investors to a government body or body corporate are not Item 3 investments and not subject to the tax file number arrangements.

17. Similarly, loans made by relevant business investors to other relevant business investors such as inter-bank loans, do not constitute Item 3 investments. Again these loans would not be subject to the tax file number arrangements.

18. A company which is set up within a company group to raise and provide finance for the group (e.g., an in-house treasury company) would normally be considered to be in the business of providing business or consumer finance. Loans made by this treasury company to other companies, within and outside the group, would be excluded from the tax file number provisions, provided that the loans are made in the ordinary course of the business of the company. However, loans made by companies in the group other than the company set up to provide finance to the group would be within the tax file number arrangements.

19. Loans made by persons not in the business of providing business or consumer finance would be Item 3 investments and subject to the tax file number arrangements.

Definition of loan

20. In the absence of a statutory definition in the tax file number provisions, the term "loan", bears its ordinary meaning. According to the Macquarie Dictionary its ordinary meaning is:

"something lent or furnished on condition of being returned, especially a sum of money lent at interest".

21. A "loan of money" in the context of that expression in

Item 3, would generally include the creation of debt by:

- (i) the lender's payment of or agreement to lend money to the government body or body corporate, or
- (ii) a credit or other financial accommodation to an account with the lender upon which the government body or body corporate is entitled to draw immediately.

Definition of body corporate

22. The term "body corporate" is also not defined in the tax file number provisions and similarly bears its ordinary meaning. Its ordinary meaning, according to the Macquarie Dictionary, in its legal context, is

"a person, association or group of persons legally incorporated in a corporation".

23. This meaning applies for the purpose of Item 3 of subsection 202D(1). The term, as used in Item 3, broadly speaking, includes an artificial person or legal entity created and recognised as having a personality and existence distinct from those of the individual persons who form it from time to time and which is incorporated under a State or Commonwealth Act or by governmental or parliamentary authority.

Notification of exclusion from Item 3 investments

24. Generally, relevant business investors will not need to provide a tax file number to an investment body in respect of loans made in the ordinary course of their business because these loans are not Item 3 investments. Investment bodies should not deduct tax from such loans.

25. However, in the case of Treasury Corporations and companies which issue Treasury notes, bonds or debentures, investment bodies do not know whether the loans made by their investors are excluded from Item 3. In other words they do not know whether the investor is subject to the tax file number arrangements. There is therefore a responsibility in these situations for relevant business investors to provide notification that they are in the business of providing business or consumer finance to the investment body. This notification (either in writing or verbally) by the investor should be accepted by the investment body at face value. If the investor does not provide such notification then the investment body may deduct and remit tax. In other words, the notification and responsibility for determining the exclusion from Item 3 in this situation, rests with the investor in relation to investment bodies which would otherwise have reporting and deducting obligations under the tax file number arrangements.

26. Investment bodies are not required to provide reports on loans excluded from Item 3. If, however, investment bodies consider it more convenient, they may report the details of such loans in the Annual Investment Income Reports under exemption

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COMMISSIONER OF TAXATION
2 May 1991