TD 1999/25 - Income tax: interest withholding tax exemption under section 128F of the Income Tax Assessment Act 1936 - what conditions need to be satisfied before a resident company can raise finance by the issue of debentures through a 'non-resident borrowing subsidiary' in another country?

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Taxation Determination

Income tax: interest withholding tax exemption under section 128F of the *Income Tax Assessment Act 1936* - what conditions need to be satisfied before a resident company can raise finance by the issue of debentures through a 'non-resident borrowing subsidiary' in another country?

Preamble

This Taxation Determination is a 'public ruling' for the purposes of Part IVAAA of the ***Taxation Administration Act 1953*** *and is legally binding on the Commissioner. Taxation Rulings TR 92/1 and TR 97/16 together explain when a Determination is a public ruling and how it is legally binding.*

Date of effect

This determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

1. Subsection 128F(8) sets out the conditions that must be met before a relevant issue of debentures can qualify for the interest withholding tax exemption.

2. It is clear the most important condition is that the particular country must be specified in the Income Tax Regulations.

3. At the date of issue of this Determination, the Government has only specified the United States of America in the relevant regulation (Regulation 14AA).

4. Taxpayers who wish to nominate further countries for specification in the Regulations should, in the first instance, forward an application to the Commissioner of Taxation. The application should set out the country or countries nominated and fully state the reasons why such a country or countries should be included in the Regulations. The decision to promulgate regulations, of course, rests with the Government. However, the Commissioner will examine any applications and advise the Government accordingly.

Commissioner of Taxation
12 May 1999

Previous draft:
TD 1999/D18

Related Rulings/Determinations:

TD 1999/8; TD 1999/9; TD 1999/10; TD 1999/11; TD 1999/12; TD 1999/13; TD 1999/14; TD 1999/15; TD 1999/16; TD 1999/17; TD 1999/18; TD 1999/19; TD 1999/20; TD 1999/21; TD 1999/22; TD 1999/23; TD 1999/24; TD 1999/26

Subject references:

Legislative references:

ITAA 128F; ITAA 128F(8); ITR 14AA

Case references:

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